2665

SUPREME COURT OF THE UNITED STATES.

No. 94.

DAVID RANDON, PLAINTIFF IN ERROR,

vs.

THOMAS TOBY.

IN ERROR TO THE DISTRICT COURT, UNITED STATES, FOR TEXAS.

INDEX.

	Original.	Print
Style of court and parties	1	2
Pleadings	2	2
Verdict for plaintiff	34	22
Defendant's 1st bill of exceptions	34	23
Defendant's 2d bill of exceptions	36	24
Defendant's 3d bill of exceptions	39	26
Defendant's 4th bill of exceptions	52	39
Defendant's 5th bill of exceptions	126	91
Defendant's 6th bill of exceptions	127	92
Defendant's 7th bill of exceptions	140	100
Defendant's 8th bill of exceptions	143	101
Judgment	144	102
Writ of error	144	102
Bond	146	103
Citation to Thomas Toby	146	104
Service of, admitted by administrator	147	104
Clerk's certificate	148	105

Gideon, Printer.

In the district court of the United States, for the district of Texas, December term, 1848.

THOMAS TOBY
vs.
DAVID RANDON.

Transcript of the record for the Supreme Court of the United States.

THE UNITED STATES OF AMERICA,
District of Texas, to wit.

At a district court of the United States, having and exercising the powers and jurisdiction of a circuit court of the same, for the district of Texas, begun and held at the city of Galveston, in said district, on the first Monday in December, in the year of our Lord one thousand eight hundred and forty-eight; present, the honorable John C. Watrous, judge of the said district; Franklin H. Merriman, esquire, attorney; James H. Cocke, esquire, marshal; Thomas Bates, Archibald M. Hughes, and James Love, esquires, clerks; among other proceedings were the following, to wit:

THOMAS TOBY
vs.
DAVID RANDON.

Be it remembered, that heretofore, to wit, on the fourth day of January, in the year of our Lord one thousand eight hundred and forty-seven, the said Thomas Toby, by Jonas Butler, his attorney, filed in the district court here his petition complaining against the said David Randon, in the words and of the tenor following, to wit:

Petition.

UNITED STATES DISTRICT COURT,
District of the State of Texas, ss.

December, 1846.

To the honorable the judges of the district court of the United States, held at Galveston, in the district of the State of Texas, in and for the State of Texas: the petition of Thomas Toby, who is a citizen of the State of Louisiana, humbly complaining of David Randon, who is a citizen of the State of Texas, and county of Fort Bend, in said State, respectfully represents unto your honor, that the said David Randon is indebted to your petitioner in the sum of three thousand five hundred and sixty-two dollars and ninety cents, together with a large amount of interest on the said amount; for that whereas, heretofore, to wit, at Galveston, the said defendant, David Randon, made and executed his certain promissory notes, in writing, dated at Galveston, June 21, 1841, and by which the said defendant promised, twelve months from date, to pay

the petitioner, by the name of Thomas Toby, esquire, or order, one thousand seven hundred and eighty-one and $\frac{46}{100}$ dollars, value received, with interest from the 14th day of April, 1841, until paid.

And then and there delivered the said promissory note to your petitioner, copy of which is hereto attached, and prayed to be made a part of this petition; by means whereof, and by force of the statute in such case made and provided, the said defendant then and there became liable to pay to the said Thomas Toby, your petitioner, the said sum of money, in the said promissory note specified, according to the tenor and effect of the said promissory note; and being so liable, he, the said defendant, in consideration thereof, afterwards, to wit, on the 21st of July, A. D. 1843, at Galveston aforesaid, undertook, and then and there faithfully promised the said plaintiff, to pay him the said sum of money in the said promissory note specified, according to the tenor and effect thereof; yet the said defendant, not regarding his said promise and undertaking, but contriving and intending to deceive and injure your petitioner, has hitherto wholly neglected and refused to pay the said sum of money in the said promissory note specified, or *or* any part of them, although often requested so to do, and although the time appointed for the payment of the same has long since elapsed; all of which is to the damage of your petitioner of seven thousand dollars. And your petitioner further avers, that the said defendant, David Randon, is indebted to your petitioner in another large sum of money, for that whereas, heretofore, the said defendant made and executed his certain other promissory note, in writing, dated Galveston, June 21st, 1841, by which the said defendant promised to pay, twenty-four months from date, to the order of the petitioner, Thomas Toby, esquire, one thousand seven hundred and eighty-one $\frac{46}{100}$ dollars, value received, with interest from the 14th April, 1841, until paid; and then and there delivered the said promissory note to your petitioner, copy of which is heretofore attached, and prayed to be made a part of this petition; by means whereof and by force of, the statute in such case made and provided, the said defendant then and there became liable to pay to your petitioner the said sum of money in the said promissory note specified, according to the tenor and effect of the said promissory note; and being so liable, he, the said defendant, in consideration thereof, afterwards, to wit, on the first day of July, A. D. 1843, at Galveston aforesaid, undertook, and then and there faithfully promised the said plaintiff, to pay him the said sum of money in the said promissory note specified, according to the tenor and effect thereof, whenever he, the said defendant, should be thereunto afterwards requested; yet the said defendant, not regarding his said several promises and undertakings, but contriving and intending to injure and defraud your petitioner, has hitherto wholly neglected and refused to pay the said promissory note, or any part or portion of the same, still does neglect and refuses so to do, although the time appointed for the payment of the same has long since elapsed; and although the said defendant has been frequently requested to pay the same; all of which is to the damage of your petitioner of seven thousand dollars; wherefore your petitioner prays judgment against the said defendant for his debt, damages,

interest, and costs, for process against the said defendant, and for all such other and further relief in law and equity as the nature and justice of his case may entitle him.

And your petitioner, as in duty bound, will ever pray, &c., &c.

JONAS BUTLER,
Attorney for plaintiff.

Copies of the notes.

$1,781 $\frac{44}{100}$ GALVESTON, *June 21st*, 1841.

Twenty-four months from date, I promise to pay to the order of Thomas Toby, esquire, one thousand seven hundred and eighty-one and $\frac{44}{100}$ dollars, value received, with interest, from the 14th April, 1841, until paid.

D. RANDON.

$1,781 45. GALVESTON, *June* 21, 1841.

Twelve months from date, I promise to pay Thomas Toby, esquire, or order, one thousand seven hundred and eighty-one and $\frac{44}{100}$ dollars, value received, with interest from the 14th day April, 1841, until paid.

D. RANDON.

Which said petition was there afterwards, and by leave of the said court, upon the tenth day of February, the fifteenth day of May, the eighth and twelfth days of June, in the year of our Lord one thousand eight hundred and forty-eight, amended by the said Thomas Toby, by his said attorney, by making the following additions thereto, to wit:

District court of the United States for the State of Texas.

THOMAS TOBY
vs.
DAVID RANDON.

Amendments to petition.

Insert after the end of the second count, and before the prayer for process and judgment, and on the fourth page, second line, after the word "same," insert

"And the said plaintiff further says, that after the making of the two several promissory notes in the petition mentioned and described, to wit, on the March fourteenth, one thousand eight hundred and forty-four, the said David Randon, the defendant, by instrument in writing signed by the said David Randon, and within four years next preceding the institution of this suit, acknowledged the justice of said claims, and did bind himself, his heirs, assigns, and administrators, that no advantage should be taken, or any plea of the statute of limitations be made, to avoid the payment of said notes.

JONES & BUTLER, *for Plffs.*"

United States district court, State of Texas.

THOMAS TOBY
vs.
DAVID RANDON.

The said plaintiff, after having been demanded, files as a part of his petition the two notes declared on, and the written instrument described in the amended petition.

JONES & BUTLER, *for Plffs.*

And now, this eighth day of June, 1848, comes the said plaintiff, and the said defendant having withdrawn their oyer, by leave of the court files this amendment to his petition, and files the notes and the paper signed D. Randon, hereto attached, as part of his amended petition; the notes are marked (1,) (2,) and the paper marked (3.)

JONES & BUTLER, *for Plffs.*

THOMAS TOBY
vs.
DAVID RANDON.

And now comes the said plaintiff, and leave of the court being first had and obtained, amends his said petition by him heretofore filed, and the said amended petition, and says: "And the said plaintiff further says, that after the making of the said promissory note first mentioned and described in his said petition, the said defendant thereafter, to wit, on the fourteenth of March, 1844, and within four years next preceding the institution of this suit, by instrument in writing signed by the said David Randon, acknowledged the justice of said claims, and did bind himself, his heirs and assigns, and administrators, that no advantage should be taken, or any plea of the statue of limitation be made, to avoid the payment of said notes, but that the same should be and remain in full force and effect as if it was renewed; and your petitioner files herewith, and as a part of his said petition, the said instrument in writing, marked 3, and also the notes sued on, marked one and two.

JONES & BUTLER.

1.

$1781 $\frac{45}{100}$. GALVESTON, *June 21st*, 1841.

Twenty-four months from date, I promise to pay to the order of Thomas Toby, esquire, one thousand seven hundred and eighty-one $\frac{45}{100}$ dollars, value received, with interest from the 14th April, 1841, until paid.

D. RANDON.

2.

$1781 $\frac{45}{100}$. GALVESTON, *June 21st*, 1841.

Twelve months from date, I promise to pay Thomas Toby, esquire, or order, one thousand seven hundred and eighty-one $\frac{45}{100}$ dollars, value rec'd, with interest from the 14th day [of] April, 1841, until paid.

D. RANDON.

3.

This instrument of March 14th, 1844, witnesseth: That whereas McKinney and Williams, of Galveston, and Thomas F. McKinney, agent of Thomas Toby, of N. Orleans, hold several notes drawn by me, and past due; and Thomas F. McKinney, some two years since did agree for McKinney & Williams, and the said Thomas Toby, to grant me further indulgence on said notes, over and above the time of their maturity; and I did then say, promise, and agree, that I would deliver to him, the said Thomas F. McKinney, each and every year, all the one-half of every crop of cotton in payment, first of the amount due the said McKinney and Williams, if there be any thing due them over and above the amount of purchase of negroes bought of them, and then in extinguishment of said amount of purchase of negroes, of which my note to said Toby is a part of consideration; and I further agree and oblige myself, that any surplus I may have from the proceeds of the other half of my crops, over and above my wants, exclusive of any speculations or purchase of negroes, shall also be turned over as above; and I further bind and obligate myself, my heirs, assigns, and administrators, that no advantage shall be taken, or any plea of statute of limitations be made, to avoid the payment of said notes, but they shall be and remain in as full force and effect as though they were renewed.

D. RANDON.

And thereupon, to wit, on the sixth day of January, in the year of our Lord eighteen hundred and forty-seven, a summons was issued in due form from the said district court, in the words and of the tenor following, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

The President of the United States of America, to the marshal or any of his lawful deputies of the district of Texas, greeting:

You are hereby commanded to summon David Randon, if he be found in your district, to be and appear before the honorable the district court of the United States. at a court to be holden in and for the district of Texas, at the city of Galveston, on the first Monday of February next, to answer the petition and complaint of Thomas Toby, in an action amounting to the sum of three thousand five hundred and sixty-two $\frac{90}{100}$ dollars, of which you will serve the defendant with the accompanying copy of said petition.

Witness the honorable John C. Watrous, judge of said court, and seal of court, at the city of Galveston, this sixth day of January, A. D. 1847, and seventy-first year of the independence of the United States.

[SEAL]

THOS. BATES, *Clerk.*

On which said summons is the following endorsement of service, to wit:

Received 9th January, 1847, and executed 18th January, 1847, by

serving the defendant with a true copy of this summons and an attested copy of the petition by the clerk.

J. M. ALLEN, *Marshal*,
By J. H. F. CHAPMAN, *Dep'y Marshal*.

And thereupon, to wit, at a term of the said court, begun and holden at Galveston aforesaid, on the first Monday of February, in the year of our Lord one thousand eight hundred and forty-seven, and on the second day of said term, a judgment was rendered against the said defendant, by default, which was to become final, unless he should file his answer to the said petition on or before the fifth day after the day of the meeting of the said court, as aforesaid.

And thereupon, to wit, on the fourth day of February, in the year of our Lord one thousand eight hundred and forty-seven, the said defendant, Harris and Pease, his attorneys, filed in the said cause his answer, in the words following, to wit:

In the United States district court, for the district of the State of Texas.

THOMAS TOBY
vs.
DAVID RANDON.

February term, 1847.

And the said David Randon comes and defends, &c., and says, that he is not bound to answer the plaintiff's petition, because the said petition and the matters therein contained, and as therein stated and set forth, are not sufficient in law to enable him to have or maintain his said suit, and this he is ready to verify; wherefore he prays judgment of the court if he is bound to answer, and for costs, &c.

HARRIS & PEASE, *for Defendant*.

And the said David Randon comes and defends, &c., and says, that the plaintiff ought not to have or maintain his said action against him, because he says, that the said several notes and supposed causes of action in the plaintiff's petition mentioned did not, nor did any or either of them, accrue to the said plaintiff at any time within four years next before the commencement of this suit, and that he has never undertaken nor promised to pay the said notes in the petition mentioned, nor any or either of them, at any time within four years next before the commencement of this suit, and that the said notes and supposed causes of action are barred and prescribed by the laws of limitation and prescription, and this he is ready to verify; wherefore he prays judgment, &c., and for costs, &c.

And the said defendant for further answer says, that said notes described in plaintiff's petition are now, and were on the day of November, 1846, owned and held by Thomas F. McKinney, or Thomas F. McKinney and Samuel M. Williams; and that the same were on the said —— day of November, 1846, fully paid and discharged to the said McKinney, or the said McKinney & Williams, in a settlement that this defendant made with the said McKinney and the said McKinney &

Williams, who were then holding said notes, and authorized to settle the same, and this he is ready to verify. And for further answer this defendant denies specially all and singular the allegations contained in plaintiff's petition, and prays judgment for his costs.

HARRIS & PEASE, *for Def't.*

And thereafter, at several times, with leave of the said court, the said defendant, by his attorneys, Harris and Pease, Hale and Ballinger, filed in the said cause amendments to the foregoing answer, in the words and at the respective times following, to wit:

On the twenty-eighth day of February, in the year of our Lord one thousand eight hundred and forty-eight, to wit:

In the district court of the United States, for the district of the State of Texas, February term, 1848.

DAVID RANDON
advs.
THOMAS TOBY.

And for answer to the plaintiff's amendment to his original petition in this cause, filed at the present term, the said David Randon comes and defends, &c., and says, that the said Thomas Toby ought not to have and maintain his aforesaid action thereof against him, because he says that he, the said David Randon, did not on March fourteenth, one thousand eight hundred and forty-four, by instrument in writing signed by himself, and within four years next preceding the institution of this suit, acknowledge the justice of the said two several promissory notes in the plaintiff's original petition mentioned and described, and bind himself, his heirs, assigns, and administrators, that no advantage should be taken, or any plea of the statute of limitations be made, to avoid the payment of said notes, as the said Thomas Toby hath complained against him; and of this he puts himself upon the country, &c.

W. G. HALE, and
W. P. BALLINGER,
Attos. for def't Randon.

And leave of the court being first obtained, for further answer in this behalf to the plaintiff's original and amended petition, the said David Randon comes and defends, &c., and says, that the said Thomas Toby ought not to have and maintain his aforesaid action thereof against him, the said Randon, because he says that the only consideration for which the notes sued on herein were given was African negroes, imported into Texas subsequently to the year 1833, and previously to the formation of the constitution of the Republic of Texas, in violation of law and contrary to good morals and public policy; and this he is ready to verify; wherefore he prays judgment, &c.

And for further answer, the said David Randon comes and defends, &c., and says, that the said Thomas Toby ought not to have and maintain his aforesaid action against him, the said Randon, because he says that the only consideration for which the notes sued on herein were

given was Africans or negroes, imported into Texas as the said Randon hath in his answer above declared, and sold by said plaintiff or his agent to this defendant as slaves lawfully held to servitude, when in fact, by operation of the laws of Texas, the said Africans or negroes were free persons; and this the said David Randon is ready to verify; wherefore he prays judgment, &c.

W G. HALE, and
W. P. BALLINGER,
Attos. for def't Randon.

On the eleventh day of March, A. D. 1848, district court of the United States, February term, 1848, district of Texas.

DAVID RANDON
ads.
THOMAS TOBY.

And the said defendant, by his attorneys, after withdrawing by leave of the court the part of his first plea to the amended petition of the said plaintiff, commencing at the words "and bind himself," &c., now demurs and excepts to so much of the said amended petition as sets forth that the said defendant did, within four years next preceding the institution of the suit of the said plaintiff, bind himself, his heirs, assigns, and administrators, that no advantage should be taken, any plea of the statute of limitations be made, to avoid the payment of the notes described in said plaintiff's petition, and says that the same is not sufficient in law.

And the said defendant, by his attorneys, here sets down and shews to the court the following special causes of demurrer and exception:

First. That the matters set forth in the part aforesaid of the said amended petition, even if true, are no bar to the said defendant's first plea to the said plaintiff's original petition.

Second. That the said matters, so set forth, can in law only amount to a covenant, the breach of which would make the said defendant liable in damages in another and independent action.

Third. That the said matters so set forth do not amount to an acknowledgment of the justice of the said plaintiff's claim.

Fourth. That the said matters so set forth do not amount to or constitute in law a new promise.

HALE & BALLINGER, *for Def't.*

On the thirty-first day of May, A. D. 1848, in the district court of the United States for the district of Texas, February term, 1848.

DAVID RANDON
ads.
THOMAS TOBY.

And for further answer to the plaintiff's amendment to his original petition in this cause, the said David Randon comes and defends, &c., and craves oyer of the said supposed instrument of writing in the said amendment mentioned, and the same being read to him in these words: "This instrument of March 14th, 1844, witnesseth, that whereas

McKinney & Williams, of Galveston, and Thomas F. McKinney, agent of Thomas Toby, of New Orleans, holds several notes drawn by me, and past due, and Thomas F. McKinney, some two years since, did agree, for McKinney and Williams and the said Thomas Toby, to grant me further indulgence on said notes over and above the time of their maturity; and I did then say, promise, and agree, that I would deliver to him, the said Thomas F. McKinney, each and every year, all the one half of every crop of cotton, in payment first of the amount due the said McKinney and Williams, if there be any thing due them over and above the amount of purchase of negroes bought of them, and then in extinguishment of said amount of purchase of negroes, of which my note to said Toby is a part of consideration; and I further agree and oblige myself that any surplus I may have from the proceeds of the other half of my crops, over and above my wants, exclusive of my speculations or purchase of negroes, shall also be turned over as above; and I further bind and obligate myself, my heirs, assigns, and administrators, that no advantage shall be taken, or any plea of statute of limitations be made, to avoid the payment of said notes, but they shall be and remain in as full force and effect as though they were renewed.

"D. RANDON."

Which being read and heard, the said Randon says that the said Thomas Toby ought not to have and maintain his action thereof against him, because he says, in addition to what he has above answered in regard to the said instrument of writing, that the same was given to one Thomas F. McKinney, and that afterwards, to wit, in November, 1846, a full and final settlement was had by this defendant with said McKinney or his agent, in which the said instrument of writing was fully satisfied and discharged, and agreed to be delivered up to this defendant; and the said instrument in writing was not so delivered up because, as the said McKinney alleged, he had lost or mislaid the same; and a receipt was given by the said McKinney to this defendant, releasing and acquitting this defendant of all notes and accounts held by the said McKinney against this defendant, which said receipt covered and included the said instrument of writing in plaintiff's amendment mentioned. And this he, the said David Randon, is ready to verify; wherefore he prays judgment, &c.

W. G. HALE, and
W. P. BALLINGER,
Attos. for def't Randon.

On the fifth day of June, A. D. 1848, district court of the United States, May term, 1848, district of Texas.

THOMAS TOBY
vs.
DAVID RANDON.

And now the said defendant, by his attorneys, and with leave of the court, amends his two pleas to the plaintiff's original and amended petition, being the last of those filed on the twenty-eighth day of February

last past, by adopting the following language and form, instead of that therein used:

And for further answer to the plaintiff's original and amended petition, the said defendant says, that the only consideration for which the said notes now sued upon were given, as the said plaintiff well knew, was African negroes imported into Texas subsequently to the year 1833, from some foreign country other than the United States of America, for the purpose of being held as slaves; all of which the said defendant is ready to verify. HALE & BALLINGER, *for Def't.*

And for further answer to the plaintiff's original and amended petition, the said defendant says, that the only consideration for which the said notes now sued upon were given, was African negroes imported into Texas subsequently to the year 1833, from some foreign country other than the United States of America, for the purpose of being held as slaves and sold to the said defendant by the said plaintiff, or his agent, as slaves for life, lawfully held in servitude, whereas by the laws in force at the time of such sale they were free; all of which the said defendant is ready to verify. HALE & BALLINGER, *for Def't*

And the said defendant, by his attorneys, and with leave of the court, amends further his answer to the plaintiff's original and amended petition; and as to the amendment thereof, and with respect to the instrument of writing referred to in such amendment, and now set forth upon oyer craved, the said defendant says, that the said instrument of writing, and all and every obligation, contract, or promise therein stated or to be in any wise inferred therefrom, have been wholly released, discharged, and vacated, for a good and valuable consideration, by the parties to whom the said instrument was given.

HALE & BALLINGER, *for Def't.*

On the 8th day of June, A. D. 1848, district court of the United States, district of Texas, May term, 1848.

THOMAS TOBY
vs.
DAVID RANDON.

And now the said defendant, by his attorneys, and with leave of the court, amends his answer in the above entitled cause, by withdrawing his plea filed the 31st May, 1848, wherein the instrument in writing referred to in the plaintiff's amendment to his petition is set forth upon oyer, and by striking out in the plea, last filed on the 5th June, the words "and now set forth upon oyer craved."

HALE & BALLINGER, *for Def't.*

On the ninth day of June, A. D. 1848, district court of the United States, district of Texas, May term, 1848.

THOMAS TOBY
vs.
DAVID RANDON.

And now, after the amendment made by the said plaintiff, and filed

McKinney & Williams, of Galveston, and Thomas F. McKinney, agent of Thomas Toby, of New Orleans, holds several notes drawn by me, and past due, and Thomas F. McKinney, some two years since, did agree, for McKinney and Williams and the said Thomas Toby, to grant me further indulgence on said notes over and above the time of their maturity; and I did then say, promise, and agree, that I would deliver to him, the said Thomas F. McKinney, each and every year, all the one half of every crop of cotton, in payment first of the amount due the said McKinney and Williams, if there be any thing due them over and above the amount of purchase of negroes bought of them, and then in extinguishment of said amount of purchase of negroes, of which my note to said Toby is a part of consideration; and I further agree and oblige myself that any surplus I may have from the proceeds of the other half of my crops, over and above my wants, exclusive of my speculations or purchase of negroes, shall also be turned over as above; and I further bind and obligate myself, my heirs, assigns, and administrators, that no advantage shall be taken, or any plea of statute of limitations be made, to avoid the payment of said notes, but they shall be and remain in as full force and effect as though they were renewed.

"D. RANDON."

Which being read and heard, the said Randon says that the said Thomas Toby ought not to have and maintain his action thereof against him, because he says, in addition to what he has above answered in regard to the said instrument of writing, that the same was given to one Thomas F. McKinney, and that afterwards, to wit, in November, 1846, a full and final settlement was had by this defendant with said McKinney or his agent, in which the said instrument of writing was fully satisfied and discharged, and agreed to be delivered up to this defendant; and the said instrument in writing was not so delivered up because, as the said McKinney alleged, he had lost or mislaid the same; and a receipt was given by the said McKinney to this defendant, releasing and acquitting this defendant of all notes and accounts held by the said McKinney against this defendant, which said receipt covered and included the said instrument of writing in plaintiff's amendment mentioned. And this he, the said David Randon, is ready to verify; wherefore he prays judgment, &c.

W. G. HALE, and
W. P. BALLINGER,
Attos. for def't Randon.

On the fifth day of June, A. D. 1848, district court of the United States, May term, 1848, district of Texas.

THOMAS TOBY
vs.
DAVID RANDON.

And now the said defendant, by his attorneys, and with leave of the court, amends his two pleas to the plaintiff's original and amended petition, being the last of those filed on the twenty-eighth day of February

last past, by adopting the following language and form, instead of that therein used:

And for further answer to the plaintiff's original and amended petition, the said defendant says, that the only consideration for which the said notes now sued upon were given, as the said plaintiff well knew, was African negroes imported into Texas subsequently to the year 1833, from some foreign country other than the United States of America, for the purpose of being held as slaves; all of which the said defendant is ready to verify. HALE & BALLINGER, *for Def't.*

And for further answer to the plaintiff's original and amended petition, the said defendant says, that the only consideration for which the said notes now sued upon were given, was African negroes imported into Texas subsequently to the year 1833, from some foreign country other than the United States of America, for the purpose of being held as slaves and sold to the said defendant by the said plaintiff, or his agent, as slaves for life, lawfully held in servitude, whereas by the laws in force at the time of such sale they were free; all of which the said defendant is ready to verify. HALE & BALLINGER, *for Def't*

And the said defendant, by his attorneys, and with leave of the court, amends further his answer to the plaintiff's original and amended petition; and as to the amendment thereof, and with respect to the instrument of writing referred to in such amendment, and now set forth upon oyer craved, the said defendant says, that the said instrument of writing, and all and every obligation, contract, or promise therein stated or to be in any wise inferred therefrom, have been wholly released, discharged, and vacated, for a good and valuable consideration, by the parties to whom the said instrument was given.

HALE & BALLINGER, *for Def't.*

On the 8th day of June, A. D. 1848, district court of the United States, district of Texas, May term, 1848.

THOMAS TOBY
vs.
DAVID RANDON.

And now the said defendant, by his attorneys, and with leave of the court, amends his answer in the above entitled cause, by withdrawing his plea filed the 31st May, 1848, wherein the instrument in writing referred to in the plaintiff's amendment to his petition is set forth upon oyer, and by striking out in the plea, last filed on the 5th June, the words "and now set forth upon oyer craved."

HALE & BALLINGER, *for Def't.*

On the ninth day of June, A. D. 1848, district court of the United States, district of Texas, May term, 1848.

THOMAS TOBY
vs.
DAVID RANDON.

And now, after the amendment made by the said plaintiff, and filed

the eighth day of June, A. D. 1848, the said defendant, by his attorneys, and with leave of the court, says that the amendment to the plaintiff's petition, as now amended, is insufficient in law, and here sets down and shows to the court the following special causes of demurrer and exception:

First. That the said amendment is argumentative in this, that it sets forth a written instrument according to its tenor, and also avers its legal effect.

Second. That the said amendment is double, and presents no distinct issuable point.

Third. Because the written instrument, set forth in the said amendment, nowhere acknowledges the justice of the claim.

Fourth. Because the said written instrument nowhere shows a new promise within four years next before the institution of the suit.

HALE & BALLINGER, *for Def't.*

On the 14th December, A. D. 1848, district court of the United States, district of Texas, December term, 1848.

THOMAS TOBY
vs. } No.
DAVID RANDON.

And now, at this term, comes the said defendant, by his attorneys, and with leave of the court amends his answer heretofore filed in this cause, and for a further amendment to his said answer says, that neither of the said notes now sued upon were given by the said defendant to the said plaintiff for any legal and valuable consideration whatever; for that the only consideration for which the said notes could, in any wise be given, was a prior indebtedness of the said defendant to the said plaintiff, existing before the eighth day of October, A. D. 1840, and before the execution of the said notes, whereby the said plaintiff had then and before said day, if at any time, a right and claim to demand the sums of money in said notes mentioned from the said defendant; and that upon the said day, by reason of the petition, affidavit, and schedule of the said plaintiff, and of the laws of the State of Louisiana, and by the order and consideration of the first judicial district court of the said State, the cession of all the property in moveables and immoveables, or in any other rights or claims of the firm of Thomas Toby and Brother, and of the said Thomas Toby himself individually, except the clothes and linen to his use and that of his family, his arms and militia accoutrements, and the instruments indispensably necessary for the trade or profession whereby he made a living, having been voluntarily made by the said plaintiff to the creditors of the said plaintiff and of the said firm of Thomas Toby & Brother, as well for himself individually as for the said firm of Thomas Toby and Brother, was accepted

Exception sustained—plea overruled.

by the said court; and that thereafter, to wit, on the twenty-first day of November, in the year aforesaid, at a meeting of the creditors of the

said Thomas Toby, and the said firm of Thomas Toby and Brother, duly called and held in conformity to law and to the order of said court, the said cession was duly accepted by the creditors aforesaid there present, and Henry Lockett and Thomas Toby were then and there duly elected as syndics of the creditors aforesaid, and for the purpose of vesting all the property aforesaid of the said Thomas Toby, and the said firm of Thomas Toby and Brother, in them, the said Henry Lockett and Thomas Toby, for the use and benefit of the said creditors; and that thereafter, to wit, on the [ ] day of December, in the year aforesaid, it was ordered by the said court, that the proceedings of the said meeting of creditors be homologated, and that the said Henry Lockett and Thomas Toby be confirmed as syndics, conformably to the said proceedings; all which will more fully appear by the record of the petition, schedule, affidavit, orders, and other proceedings in the cause of Thomas Toby and Thomas Toby and Brother, against their creditors in the said court, now transferred by the laws of the said State of Louisiana to the fifth district court of New Orleans, in said State, and therein remaining; wherefore, etc.

HARRIS & PEASE,
BALLINGER [&] HALE,
Attorneys for def't.

Exception not sustained.

And for a further amendment to his said answer the said defendant says, that no legal or valuable consideration whatever for the making of the said notes now sued upon, or either of them; existed at the time of the making of the said notes, or either of them; and this the said defendant is ready to verify; wherefore, etc.

HARRIS & PEASE,
BALLINGER & HALE,
Attorneys for defendant.

Exception sustained—Plea overruled.

And for a further amendment to his said answer the said defendant says, that the said plaintiff procured the notes now sued upon to be made and delivered to Thomas F. McKinney, as agent of the said plaintiff for him, in fraud of the laws of the State of Louisiana, of the rights of the creditors of the said plaintiff, and of this defendant, by fraudulently withholding from the said defendant a knowledge of the fact that the said plaintiff had, previously to the making and delivery of the said notes as aforesaid, made a cession of all his property, rights, and claims, according to the laws of the said State, to the creditors of him, the said plaintiff, and of the firm of Thomas Toby and Brother, whereof the said plaintiff was a member; and this the said defendant is ready to verify; wherefore, etc.

HARRIS & PEASE,
BALLINGER & HALE,
Attorneys for defendant.

Exception overruled—Plea sustained.

And for a further amendment to his said answer the said defendant says, that the said notes now sued upon were made and delivered to Thomas F. McKinney, as agent for the said plaintiff for him, under a mistake of the facts respecting the authority and right of the said plaintiff to demand and receive the same; and this the said defendant is ready to verify; wherefore, etc.

HARRIS & PEASE,
BALLINGER & HALE,
Attorneys for defendant.

And for a further amendment to his said answer the said defendant says, that the only consideration for which the said notes now sued upon were given, as the said plaintiff well knew, were negroes imported from Africa to Cuba during the year 1835, and imported from Cuba to Texas thereafter, and during the year aforesaid, for the purpose of being held as slaves.

HARRIS & PEASE,
BALLINGER & HALE,
Attorneys for defendant.

And for a further amendment to his said answer, the said defendant strikes out the words, "owned and", on the fourth line of the second page of his former answer, filed on the fourth day of February, 1847.

HARRIS & PEASE,
BALLINGER & HALE,
Attorneys for defendant.

On the 19th December, in the year of our Lord 1848, in the district court of the United States, district of Texas.

THOMAS TOBY
vs.
DAVID RANDON.

And now comes the said defendant, David Randon, and leave of the court being first had and obtained, makes an amendment to his answer herein, and for further answer says:

That the only consideration for which the notes herein sued on were given was a supposed indebtedness from this defendant for certain negroes sold by Thomas F. McKinney, in which said negroes the said Toby had or claimed an interest as part owner, and which were sold to this defendant prior to the 8th day of October, 1840; that the amount which this defendant was so supposed to be owing the said Toby was, by agreement and understanding of the parties, included in a note executed by this defendant to the said McKinney and Saml. McWilliams.

And this defendant says, that the said notes herein sued on were given at the date thereof, and the only consideration for the same was the supposed indebtedness aforesaid, under the belief that the right to demand and receive the said indebtedness, at the time of the execution of the said notes, still continued and remained in the said Thomas Toby,

in the manner as above described. But this defendant says, that, on or about the eighth day of October, 1840, and before the execution of said notes, the said claim and supposed indebtedness, and all right in the said Toby to the said note, given in part as aforesaid for the benefit of said Toby, and all right to the proceeds of the said sale, was ceded, transferred, and assigned to the creditors of the said Thomas Toby and Thomas Toby and Brother, and thereafter to the syndics of the same, in certain proceedings under the insolvent law of Louisiana, in the court of the first judicial district of Louisiana, as by the record of the proceedings in said court is now here ready to be shown.

And this defendant further says, that the said Toby procured the execution of the said notes, concealing from this defendant knowledge of the said facts of his said assignment; and that this defendant was entirely ignorant of the same, and that no other consideration existed for the said notes. Wherefore this defendant says, that the said notes were procured by concealment, fraud, and deceit, on the part of said Toby, and were without any legal and sufficient consideration. And this he is ready to verify; wherefore, &c.

HARRIS & PEASE,
HALE & BALLINGER,
For defendant.

On the 19th day of December, A. D. 1848, district court of the United States, district of Texas. December term, 1848.

THOMAS TOBY
vs.
DAVID RANDON.

And now, at this term, comes the said defendant, and by leave of the court first had and obtained, amends his answer heretofore filed and says, that the only consideration for the notes here sued on was a sale of negroes by the plaintiff and others to this defendant; that the said negroes were imported from Africa to Cuba during the year 1835, and subsequently, during said year, were imported into Texas for the purpose of being held as slaves; that the said negroes were not slaves for life at the time of their importation into Texas; that they were never legally held as slaves, but, at the time of their importation as aforesaid, were and still are free; all of which was well known to said plaintiff at the time of and before the execution of the said notes. And this the said defendant is ready to verify; wherefore, &c.

HARRIS & PEASE,
BALLINGER & HALE,
Attorneys for defendant.

On the 22d day of December, A. D. 1849, in the district court of the United States, district of Texas.

THOMAS TOBY
vs.
DAVID RANDON. No.

December term, 1848.

And now comes the said defendant, David Randon, by his attorneys,

and leave of the court being first had and obtained, makes an amendment to his answer herein, and for further answer in this behalf he says:

That the only consideration for which the notes herein sued on were given was a supposed indebtedness from this defendant for certain negroes, sold by Thomas F. McKinney to this defendant; in which said negroes the said Toby had or claimed an interest as part owner, and which were sold to this defendant prior to the 8th day of October, 1840. That the amount which this defendant was so supposed to owe the said Toby in consideration of said sale was, by agreement and understanding between the parties, included in a note executed by this defendant to Thomas F. McKinney and Saml. M. Williams, as the agents of said Toby. And this defendant says, that the said notes herein sued on were given at the date thereof, and the only consideration for the same was the supposed indebtedness aforesaid, under the belief that the right to demand and receive the said indebtedness still continued and remained in the said Thomas Toby, in the manner as above described. But this defendant says, that, on or about the 8th day of October, 1840, and before the execution of said notes to Toby, but subsequent to said sale, and the execution of said note to McKinney & Williams, the said claim and supposed indebtedness against this defendant, and all right in the said Toby to the said note given in part as aforesaid for the benefit of said Toby, and all right of the said Toby to the proceeds of the said sale, were ceded, transferred, and assigned to the creditors of the said Toby and Thomas Toby & Brother, and thereafter to one Henry Lockett and one Thomas Toby, syndics of said creditors, by a cession and proceedings thereafter under the insolvent laws of the State of Louisiana, in the court of the first judicial district of said State, as by the record of said proceeding is now here in court ready to be shewn. And this defendant says, that the said Toby procured the execution of the notes herein sued on, concealing from this defendant knowledge of the said facts of his cession, and the proceedings aforesaid; and this defendant was entirely ignorant of the same.

Wherefore this defendant says, that the said notes were procured by concealment, fraud, and deceit on the part of said Toby, and were without any legal and sufficient consideration. And all this the said David Randon is ready to verify; wherefore, &c.

HARRIS & PEASE,
HALE [&] BALLINGER,
Attorneys for defend't.

THOMAS TOBY
vs.
DAVID RANDON.

The defendant amends, with leave of the court, by inserting between 26th and 27th lines, 1st page, the words "as the agents of said Toby." And by striking out the 10th and 15th lines, 2d page inclusive, and inserting instead "so much of the said note as included the indebtedness to said Toby, as aforesaid, which said McKinney & Williams were agents as aforesaid;" and defendant further says, that the said note to

McKinney and Williams, was executed and due in the year 1839, and that said Thomas Toby was then and has ever since remained a citizen of Louisiana.

HARRIS & PEASE,
HALE & BALLINGER,
For defendants.

And thereupon, to wit, on the fifteenth day of May, in the year of our Lord one thousand eight hundred and forty-eight, the said plaintiff, by Jones & Butler, his attorneys, filed his joinder in demurrer to the demurrer of the said defendant, filed on the eleventh day of March, in the same year, in the words following, to wit:

United States district court, State of Texas.

THOMAS TOBY
vs.
DAVID RANDON.

And now comes the said Thomas Toby and says, that he files herewith a motion to strike from the files a demurrer interposed by defendant to an amendment of plaintiff's petition, and in the event that said motion be overruled, and subject to his right to strike said demurrer from the file, he says the said amended petition should not be adjudged insufficient in law by reason of any thing by said defendant in said demurrer alleged.

JONES & BUTLER, *for Pl'ffs.*

And plaintiff comes also and says, that the said plea secondly above to said plaintiff's original and amended petition interposed, to wit, the second plea in the answer filed on the 28th Feb'y, 1848, is not sufficient in law, and he excepts to the same, and assigns the following causes of exception:

First. The plea shows no legal cause why, by reason of any thing in that plea alleged, the plaintiff should not recover.

2d. There is nothing in the plea which shows an illegality in the consideration of the notes.

Third. There was no law prohibiting the *the* importation of African negroes prior to the formation of the constitution of Texas.

Fourth. The dates of the notes show they were given subsequent to the formation of the constitution of the Republic of Texas, and the plea shows the African negroes were imported before the formation of the constitution.

And for that the plea is uncertain, informal, and insufficient.

And the defendant says that the same is sufficient.

HALE & BALLINGER, *for Def't.*

And to the third plea in said answer filed on said twenty-eighth day of February, 1848, the plaintiff says it is insufficient in law, and he excepts to the same, and assigns the following reasons of exception:

First. The plea shows no sufficient legal cause, by reason of any thing in that plea alleged why the plaintiff should not recover.

Second. There is nothing in the plea which shows an illegality in the consideration of the notes.

Third. The plea is argumentative.

Fourth. The plea does not present an issuable point.

And for that it is uncertain, informal, and insufficient.

JONES & BUTLER.

And the defendant says that the same is sufficient.

HALE & BALLINGER, *for Def't.*

And thereafter, to wit, on the eighth day of June, in the year of our Lord one thousand eight hundred and forty-eight, the said plaintiff, by his said attorneys, filed his demurrers and exceptions to the first and second of the pleas, marked 8 and 9, contained in the amendment to the answer of the said defendant, filed on the fifth day of the same month, in the words and figures following, to wit:

U. S. district court, State of Texas.

THOMAS TOBY
vs.
DAVID RANDON.

And now comes the said Thomas Toby and excepts to the first of said amended plea in the said amended answer by the said defendant, filed on the fifth day of June, 1848, and says that it is not sufficient, and assigns for cause:

1. That the said plea shows no sufficient legal reason why plaintiff should not recover.

2. That the said plea is argumentative.

3. That it does not aver sufficient facts to constitute a defence.

4. It is surplusage to aver that the negroes were imported from some foreign country other than the United States of America.

5. The averment that they were imported subsequently to the year 1833, presents an immaterial issue.

6. The plea is a quasi plea of failure of title, and does not aver the loss of possession.

And for that the said plea is uncertain, informal, and insufficient.

And the said plaintiff excepts to the second plea of said amendment to answer, filed on said 5th of June, and says the same is insufficient in law; and assigns the same reasons by him above assigned in his exceptions to the first plea, and also the following:

The plea does not aver when the negroes were sold, to enable the court to judge what laws were in force at the time of sale.

JONES & BUTLER, *for Pl'ff.*

And thereafter, to wit, on the fifteenth day of December, in the year of our Lord one thousand eight hundred and forty-eight, the said defendant, by his said attorneys, filed his exceptions to the several demurrers and pleas, marked 11, 12, 13, 14, and 15, contained in the amendment to the answer of the said defendant, filed on the fourteenth day of the same month, in the words and figures following, to wit:

U. S. district court.

THOMAS TOBY
vs.
DAVID RANDON.

And now comes the said plaintiff and excepts to the answers by the defendant filed on the 14th of December, 1848, and assigns for cause to the whole, except the last pretended amendment.

That the said answer pretends to be an amended answer, when in fact it is composed of separate and distinct pleas, not herein before pleaded, and violates the rule requiring the defendant to file all his pleas at the same time.

And the said plaintiff excepts to the said first plea in the said amended answer contained, and says that it is not sufficient in law, for that it shews no legal reason why, by virtue of any thing in that plea alleged, the plaintiff should not recover.

First. The said plea merely sets up that the beneficial interest in the note sued on is jointly in the plaintiff and another, and shows no defence to the note as against the said owners of the beneficial interest.

Second. That the said plea, if it amounts to any thing, is merely a plea in abatement, is not verified according to law, and comes too late.

And for that the same is uncertain, informal, and insufficient.

And to the said second plea in the said answer, the plaintiff excepts to the same, and says it is insufficient in law, for that the said plea does set up a failure of consideration, nor an illegal consideration, nor a want of consideration, and states a conclusion of law, instead of facts.

And for that the same is uncertain, informal, and insufficient.

And to the said third plea in said answer, the said plaintiff excepts to the same, and says the same is not sufficient in law.

And shews for cause that, if the plaintiff has defrauded his creditors, it is no reason why the defendant should not pay his own debts.

2. That a cession of property in Louisiana would not authorize the syndics to sue in this State.

3. That the question as to the party beneficially entitled to the debt sued on is between the plaintiff and his creditors, the defendant has nothing to do with. A payment to or recovery by the plaintiff is a legal discharge to the defendant.

4. The facts charged as fraud do not amount to a fraud on defendant.

And to the said fourth plea the plaintiff excepts, and says it is not sufficient in law; and shows for cause,

That the said plea does not deny the indebtedness on the notes.

Shews no right in another, and sets up no legal defence; and for that it is uncertain, informal, and insufficient.

And to the said fifth plea, the plaintiff excepts and says the same is insufficient in law; and shews for cause,

1. That the plea does not show that the plaintiff was concerned in the importation of the negroes.

2. It does not aver that the consideration of the note was a sale of negroes.

3. It does not shew the sale was made before the declaration of independence.

4. It does not aver a failure of title to the negroes.

5. It does not embrace all the necessary allegations to shew that the consideration was an illegal one.

6. If the negroes were slaves for life before their emigration to Texas, and at the date of the declaration of independence were held in bondage, the sale was not illegal, and the defendant, in pleading, should make all the necessary averments to shew that the consideration was an illegal one.

JONES & BUTLER.

For the causes and reasons assigned herein before, and by consent of counsel waiving a special exception and specification to each plea, the plaintiff excepts to the pleas of defendant filed by the said defendant on the day of December, 1848. JONES & BUTLER, *for Pl'ff.*

And thereafter, to wit, on the twenty-second day of December, in the year of our Lord one thousand eight hundred and forty-eight, the said plaintiff, by his said attorneys, filed his two several demurrers and exceptions to pleas marked 16, 18, and 19, contained in the amendments to the answer of the said defendant, filed on the nineteenth and twenty-second days respectively of the same month, in the words following, to wit:

THOMAS TOBY
vs.
DAVID RANDON.

In district court, December term, 1848.

And now comes the plaintiff, and excepts and demurs to the last amended plea of said defendant, and says the same is insufficient in law; and shows for cause,

1. Said plea is uncertain in this, that it does not shew to whom the assignment of Toby's interest was made.

2. Said plea avers the assignment of a mere chose in action, in the nature of an account by operation of a foreign insolvent law.

3. Said plea shews legal indebtedness on the part of defendant to McKinney and Williams, which was created by consent of parties, and could not be transferred by Toby, so as to enable the assignees to sue.

4. Said plea shews nothing to bar the plaintiff's right of action on this note, inasmuch as the suit is well brought in the name of the insolvent, and could only be brought in his name, either upon the notes or the original indebtedness.

5. Said plea sets up a claim of Toby against McKinney & Williams, in the nature of an account as the subject of assignment by Toby.

JONES & BUTLER.

THOMAS TOBY
vs.
DAVID RANDON.

In district court, U. S., December term, 1848.

And now comes the plaintiff, and excepts and demurs to the last

amended plea of defendant as amended, says the same is not sufficient in law, and shews for cause:

1st. Said plea does not aver notice to Randon of the assignment.

2. Shews the assignment of a part of note, without saying what part, or which part.

3. Shews the assignment of a part only of a note payable to McKinney & Williams by Toby, who was not a party to it, the entire legal interest being in McKinney & Williams.

4. Shews an assignment of a mere equity in the nature of an account against McKinney & Williams, by operation of a foreign insolvent law.

5. Said plea shews no legal interest, either in Toby or his assignees, that can be enforced in a court of law against defendant Randon.

6. Said plea shows no legal indebtedness on the part of Randon to Toby, upon which Toby or his assignees could have sustained a suit at law against Randon. JONES & BUTLER, *for Pl'ff.*

And thereupon, to wit, on the eighth day of February, in the year of our Lord one thousand eight hundred and forty-seven, being a day of the February term of the said court, the said suit was continued to the next term, upon affidavit of the said defendant.

And thereafter, to wit, on the sixth day of May, in the year of our Lord one thousand eight hundred and forty-seven, being a day of the May term of the said court, the said suit was continued to the next term, upon affidavit of the said defendant.

And thereafter, to wit, on the 17th day of December, in the year of our Lord one thousand eight hundred and forty-seven, being a day of the December term of the said court, the said suit was continued to the next term, upon affidavit of the said defendant.

And thereafter, to wit, on the tenth day of June, in the year of our Lord one thousand eight hundred and forty-eight, being a day of the May term of the said court, the following judgment was had in the said suit:

THOMAS TOBY }
vs.
DAVID RANDON. }

This day come the parties by their attorneys, and defendant's demurrer to plaintiff's amended petition, after hearing argument of counsel, and upon mature consideration of the court, said demurrer was overruled. The plaintiff's exception filed the 8th June, 1848, to defendant's amended answer, after hearing arguments of counsel, and upon the mature consideration of court, said exceptions were overruled.

And thereafter, to wit, on the fourteenth day of June, in the year of our Lord one thousand eight hundred and forty-eight, being a day of the said May term of the said court, a mistrial was had in the said cause, which is in the words following, to wit:

THOMAS TOBY }
vs.
DAVID RANDON. }

This day came the parties by their attorneys, and joined issue; where-

upon came the following jury, to wit: Stacy B. Lewis, W. G. Banks, Thomas M. League, P. Edmonds, John H. Bennett, C. P. Herman, James Welsh, D. D. Culp, George B. Jones, John Warren, W. G. Davis, and W. M. Seargeant, good and lawful men, who being duly elected, tried, and sworn, upon their oath do say: We, the jury, but as the jury, cannot agree; by consent of parties and leave of court a jury is withdrawn and a mistrial had.

And thereafter, to wit, on the twenty-third day of December, in the year of our Lord one thousand eight hundred and forty-eight, being a day of the December term of the said court, the following judgment was rendered in the said cause, to wit:

THOMAS TOBY
vs.
DAVID RANDON.

This day came the parties aforesaid by their attorneys, and upon motion of defendant by attorney, it is ordered that he have leave to amend his answer herein, by filing pleas marked numbers eleven, twelve, thirteen, fourteen, and fifteen; and thereupon, plaintiff excepted to said pleas, and said exceptions were argued; and because it seems to the court, that the exceptions to pleas number eleven and thirteen are well taken, it is ordered that the same be allowed; but because, as to pleas number twelve, fourteen, and fifteen, the said exceptions are not well taken, it is ordered that the same be disallowed; and on further motion of said defendant by counsel, it is ordered that he have leave to amend his said answer, by filing pleas sixteen, seventeen, eighteen, and nineteen, and thereupon the plaintiff excepted to said pleas, and said exceptions were argued; and because it seems to the court that the exceptions to pleas sixteen, eighteen, and nineteen are well taken, it is ordered that the same be allowed; but because as to plea number seventeen, the said exceptions are not well taken, it is ordered that the same be disallowed; and the parties being now at issue, it is ordered that a jury come here, &c.; whereupon came a jury of lawful men, to wit, F. S. Stockdale, Aidan Pullam, James L. Smithers, John P. Roan, James G. Heard, Israel Savage, J. H. McGill, J. S. Stafferd, Angus McNeill, Frederick Rankin, Augustus Hotchkiss, and J. C. Shaw, who being sworn well and truly to try the issue joined, upon their oath do say, "We, the jury, find the issues joined in favor of the plaintiff, and assess his damages, by reason of the breaches of promise in the petition mentioned, to five thousand seven hundred and fifty-eight dollars and four cents.

And thereupon, to wit, on the day and year aforesaid, and before the jury aforesaid had retired, the said defendant by his said attorneys excepted to several opinions of the court given upon the trial of the said cause, and tendered eight bills of exceptions, which were received, signed, and sealed by the court, and ordered to be made part of the record in the said cause, are in the words and figures following, to wit:

First Bill.

District court of the United States, district of Texas.

THOMAS TOBY
vs.
DAVID RANDON.

December term, 1848.

Be it remembered, that by the rules of this court the practice and proceedings on the common law side thereof are governed by the laws and rules regulating practice and proceedings in the courts of the State of Texas, except so far as the same may, by some order of this court, or by the laws of the United States, be altered or modified; and that, by the laws of the said State, proceedings are by petition and answer, or plea or pleas, and if the plaintiff thinks it proper, a special replication to any of the pleas of the defendant may, both by the practice of the courts of the said State, as well as by the general orders of this court, be filed with the effect of a like replication at common law, but no replication is required by the rules; and this cause came on to be tried before the court and jury, on the petition of the plaintiff as amended, and the following pleas of the defendant, which on argument were adjudged sufficient, and were sustained against the exceptions or demurrers of the plaintiff, to wit, pleas numbered two, three, four, five, six, seven, eight, nine, ten, twelve, fourteen, fifteen, and seventeen; the following pleas, numbered seven, thirteen, sixteen, and eighteen, having been on argument adjudged insufficient. And on the trial of the said cause, the plaintiff to sustain the issues joined gave in evidence the two promissory notes sued on, in words and figures following, to wit:

$1781 $\frac{45}{100}$. GALVESTON, *June* 21*st*, 1841.

Twenty-four months from date, I promise to pay to the order of Thomas Toby, esquire, one thousand seven hundred and eighty-one and $\frac{45}{100}$ dollars, value received, with interest from the 14th April, 1841, until paid. D. RANDON.

$1781 $\frac{45}{100}$. GALVESTON, *June* 21, 1841.

Twelve months from date I promise to pay to Thomas Toby, esquire, or order, one thousand seven hundred and eighty-one and $\frac{45}{100}$ dollars, value received, with interest from the 14th day of April, 1841, until paid. D. RANDON.

Which promissory note was marked "2."

The plaintiff then offered in evidence the following instrument in writing, marked "No. 3."

"This instrument of March 14th, 1844, witnesseth, that whereas McKinney and Williams of Galveston, and Thomas F. McKinney, agent of Thomas Toby, of New Orleans, hold several notes drawn by me, and past due, and Thomas F. McKinney, some two years since, did agree for McKinney and Williams and the said Thomas Toby to grant me further indulgence on said notes over and above the time of

their maturity, and I did then say, promise, and agree that I would deliver to him, the said Thomas F. McKinney, each and every year, all the one-half of every crop of cotton in payment, first of the amount due the said McKinney and Williams, if there be any thing due them over and above the amount of purchase of negroes bought of them, and then in extinguishment of said amount of purchase of negroes, of which my note to said Toby is part of consideration; and I further agree and oblige myself, that any surplus I may have from the proceeds of the other half of my crops, over and above my wants, exclusive of any speculations or purchase of negroes, shall also be turned over as above; and I further bind and obligate myself, my heirs, assigns, and administrators, that no advantage shall be taken, or any plea of statute of limitations be made, to avoid the payment of said notes, but they shall be and remain in as full force and effect as though they were renewed.

"D. RANDON."

To the admissibility of which said writing the defendant by his counsel objected, as not sufficient to take the *the* said promissory note marked "2," out of the statute of limitations. But the court overruled the said objection, made by the counsel of the defendant, and permitted the said writing to be read in evidence to the jury; to which opinion and ruling of the court, permitting the said writing to be read in evidence to the jury, the defendant by his counsel excepted, and tendered this his first bill of exceptions, which he prays may be signed, sealed, and made a part of the record in the cause, which is done accordingly.

JOHN C. WATROUS. [SEAL.]

Saturday, December 23d, 1848.

Second bill.

District court of the United States, district of Texas.

THOMAS TOBY
vs.
DAVID RANDON.

December term, 1848.

Be it remembered, that after the jury were sworn to try the issues in this cause, the plaintiff, to maintain the said issues on his part, introduced the evidence contained in the bill of exceptions number 1, heretofore filed in this cause; and thereupon the said plaintiff closed the evidence on his part; and the said defendant, to maintain the said issues on his part, gave in evidence the deposition of John Randon, as follows, to wit:

The witness was present at the house of David Randon, about the first of November, 1846, when Ephraim McLean came there with a power of attorney from Thomas F. McKinney, authorizing the said McLean to settle all business between the said David Randon and the said Thomas F. McKinney, and the firm of McKinney and Williams, and for the purpose of so settling such business, and the said McLean stated that such was the purpose of his visit. After the settlement between Randon and McLean was agreed upon, witness came to Galves-

ton at the instance of the said David Randon, for the purpose of receiving from Thomas F. McKinney a receipt in full of all claims held by the said McKinney against the said David Randon, and also a cotton obligation. The said McLean knew that the respondent was coming, and what he was coming for, and knew that the respondent came to obtain the receipt and the cotton obligation, and the said McLean consented thereto.

When I arrived in Galveston, I remained a day or two, and did not see McKinney; during the time I saw McLean, and he handed me the receipt; I asked him where the obligation was, and he told me he hadn't got it. I told him that I must have it, because I was instructed to get that particularly by my uncle, David Randon. I rode out to Mr. McKinney's house, and demanded of him the cotton obligation, which he held against David Randon, and which I was requested to get. As near as I recollect, he said to me, "I remember the obligation, but it is either lost or mislaid; but it is of no consequence in this settlemen, for the receipt which I have given McLean for you includes all." I rather insisted on his looking for it, but he said he wouldn't know where to look for it, as he had been sick for some time, and his papers were mislaid. He seemed to have no objections in the least to giving up the obligation, if he could have found it; he did not suggest any rights which he or any one else had, growing out of the said obligation. Mr. McKinney said the receipt included all, and that the obligation was of no consequence, therefore, to David Randon. David Randon sent to McKinney all the African negroes he had except two; I think he sent twenty-one; he retained two; one he retained in accordance with the settlement, and the other he purchased and gave his note for.

Cross examination.

The settlement, so far as witness knew, was not reduced to writing; he was present a part but not all of the time when the negotiation between Randon & McLean for a settlement was going on; McLean delivered to Randon some notes, but nothing else so far as witness knew; Did not know what notes they were; has heard from David Randon that they were his notes, held by Thomas F. McKinney; witness demanded of Thomas F. McKinney the cotton obligation; did not demand the Toby notes.

The counsel for the plaintiff objected to the reading of the foregoing testimony of John Randon.

And the said defendant, further to maintain the said issues on his part, offered in evidence the following instrument in writing, and to prove the signature to the same to be the handwriting of Thomas F. McKinney;

GALVESTON, *Nov.* 11*th*, 1846.

Know all men by these presents, that a settlement, made a few days since with David Randon by E. McLean, representing McKinney & Williams, and Thomas F. McKinney, was a full and final settlement of all notes and accounts held by the said firm, or the said McKinney, against said Randon; and the said McKinney and Williams do hereby

grant to him, the said Randon, a full release and acquittance of all notes and accounts, according to the tenor of said settlement; it being understood that there is now no unsettled note or account between us, except some land obligations of small value, and an obligation given to E. McLean, in the name of Thomas F. McKinney, for seven hundred dollars, or a return of a negro man, Sam, or one of equal value, which obligation bears date 9th Nov., 1846.—

THOMAS F. McKINNEY,
For himself and McKinney & Williams.

Whereupon the counsel for the said plaintiff moved the court to exclude the said instrument in writing from going to the jury as evidence in this cause, because the same was not pertinent to any of the issues therein; and the court sustained the objection of the said counsel for the plaintiff, and excluded the said instrument of writing from going to the jury; to which opinion of the court, sustaining the said objection, and excluding the said instrument in writing so offered as evidence, the defendant, by his counsel, excepted; and tendered this his second bill of exceptions, which he prays may be signed, sealed, and made part of the record in this cause, and the same is now done accordingly.

Saturday, December 23d, 1848.

JOHN C. WATROUS. [SEAL.]

Third bill.

DISTRICT COURT OF THE UNITED STATES,

District of Texas.

THOMAS TOBY
vs.
DAVID RANDON.

December term, 1848.

Be it remembered, that on the trial of this cause, after the jury were sworn to try the issues joined, the plaintiff and defendant, to maintain the said issues on their respective parts, introduced the evidence contained in the former bills of exceptions, numbers one and two; and thereupon the said defendant, further to maintain the said issues on his part, gave in evidence a series of accounts which were proved by Thomas F. McKinney to be accounts current in the handwriting of the clerks of the firm of McKinney & Williams, and of Thomas F. McKinney; the accounts, rendered 30th August, 1846, showed a balance at that date in favor of McKinney & Williams against David Randon, of eleven thousand nine hundred and ninety-seven dollars forty-two cents; and a balance at the same date in favor of David Randon against Thomas F. McKinney, of two thousand six hundred and forty-eight dollars fifty-one cents, which was transferred to the credit of David Randon with the firm of McKinney & Williams, and left the balance due them from Randon nine thousand three hundred and forty-eight dollars and ninety-one cents.

These accounts were in the words and figures following, to wit:

DR. *Mr. David Randon in account with McKinney & Williams, Galveston.*

				Days	Interest.	Amount.
1839.	(Interest to 1st April, 1840.)					
March 28	To your draft, favor R. Mills & Co., 2d instant...			395	$216 67	$2,000 00
	To cash, 16th February.....			408	223 89	2,000 00
April 12	To cash paid labor on cotton.....		$2 50			
	Paid freight from Brazos, 117 bales, $1 50 cotton.....		175 50			
	Do. do. 22 bales.....		33 00			
				353	20 40	211 00
16	2 bbls. flour, @ $12 50, 1 Columbian bridle and saddle, $120.....		145 00			
	21 bars iron, 825 lbs., @ 7 cents.....		61 87			
	1 sheet boiler, iron, 152 lbs., 10¼ cents....		15 96			
	Wharfage and labor.....		75			
				91	5 59	223 58
	To your note favor S. L. Jones & Co., 1st March.....		100 00			
	Less half exchange.....		50 00	396	5 42	50 00
May 22	To your draft favor McLean.....			313	5 13	60 00
	5 per cent. advancing do.....			.....	.....	3 00
	Do. do. $4,000 in March and February...			.....	.....	200 00
June 21	To cash paid Mr. Turvin for your order.....			283	15 50	200 00
	5 per cent. for advancing.....			.....	.....	10 00
July 1	25th June, cash from Swinson, $500, equal to.....			279	15 28	200 00
	5 per cent. for advancing.....			.....	.....	10 00
	To 4 bbls. cement, @ $7 50, drayage.....			91	77	31 00
31	To cash paid E. McLean.....			.....	13 33	200 00
	5 per cent. for advancing.....			243	.....	10 00
	Labor on cement shipped you.....			.....	.....	50
Aug'st 19	To 8 coils rope, 798 lbs.....		$99 75			
	To 9 pieces bagging, 718 yards, @ 34 cents		244 12			
	Wharfage on do.....		56			
				91	25 83	344 43
Sept'ber 3	To 30 pairs Russett brogans, @ $2 25.....		67 50			
	To 4 pairs blankets, @ $4 50.....		18 00	91	6 38	85 50
	To cash paid your draft favor Samuel Clement....			210	5 18	90 00
	5 per cent. for advancing.....			.....	.....	4 50
Oct'ber 12	Cash paid Chassaigne, for 3 sacks salt.....			171	60	13 50
	5 per cent. for advancing.....			.....	.....	67
	Carried over.....				$559 97	$5,947 68
	To amount brought over.....				559 97	5,947 68
Oct. 18	1 bale gunny bagging, 348 yds., @ 35 cts.		$121 80			
	7 coils rope, 488 lbs., @ 15 cents.....		73 20			
	12 lbs. twine, @ 50 cents.....		6 00			
	Wharfage and labor.....		1 50			
				91	5 06	202 50
Nov. 19	1 bbl. rice, 228 lbs., @ 14 cents.....		31 92			
	1 bbl. sugar, 250 lbs., @ 13 cents.....		32 50			
	1 bbl. Holland gin, 38 gallons, @ 13½ cts.		61 75			
	1 keg powder.....		9 00			
	Drayage, labor, and wharfage.....		1 50	91	17 08	136 67
Dec. 15	To sundries to McDougal.....			.....	.....	60 25
18	To 3 bbls. flour, @ $12.....			.....	.....	36 00

Account—Continued.

			Days	Interest.	Amount.
1839.					
Dec. 28	To cash Texas money, $1,000, less $975 returned	$25 00			
31	To cash paid your order to Reed	118 00			
	Cash this amount	1000 00			
		$1143 00			
	Less two-thirds exchange	762 00			
			91	$9 52	$381 00
1840.					
Jan'ry 1	To your draft favor Doctor Power		90	11 95	478 00
	To your account with J. F. McKinney & Co		90	10 44	417 88
	To 11th February, 1839, freight on merchandise per Laura			1 68	16 00
	In February and March, freight down the Brazos on 139 bales cotton, *a* 12½ cents		365	20 85	208 50
	Labor and weighing	$18 50			
	Mending bales and bagging, and twine	9 75			
	Wharfage	11 12	365	3 94	39 37
	Balance of interest to your debit				381 02
				$640 49	$8,304 37
	To balance due McK. & W. brought down				1,210 36
	Errors and omissions excepted. Galveston, March 30th, 1840. McKINNEY & WILLIAMS. Per JAMES P. COLLINS.				
	To amount Jones, Ufford & Co.'s account				124 00
	Carried over				$1,334 36

Cr

			Days.	Interest.	Amount.
1839.					
May 7	By amount your judgment and interest against W. S. Hall		328	$28 60	$318 75
1840.					
Jan'ry 18	To cash to T. F. McK., 6th inst		328	36 00	400 00
	To amount McLean's order		73	1 50	75 00
March 20	To proceeds sales 139 bales cotton, shipped to Liverpool per bark Ambassador in April, 1839, proceeds due 10th December		112	193 37	6,300 76
	Balance of interest to your debit			381 02	
	Balance due McK. & W., 1st April				1,210 36
				$640 49	$8,304 37

DR. *Mr. D. Randon to McKinney and Williams.*

1840.			
April 1	To balance due per account on other side		$1,334 36
	3 months' interest to 1st July		33 36
May 7	To cash paid Morris for a buggy, &c	$60 00	
	5 per cent. for advancing	3 00	
	Interest to 1st July	82	
			63 87
May 14	To bill goods this date		70 41
	To your order favor John Sharpe, 1st March	179 05	
	5 per cent. for advancing	8 95	
	4 months' interest to 1st July	5 96	
			193 91
	To a bad $50 Texas note, handed the clerk of the Laura one year since, equal to	25 00	
	12 months' interest	2 50	
			27 50
25	Cash paid freight on 116 bales cotton, from Quintana	174 00	
	5 per cent. for advancing	8 70	
	Interest to 1st July	1 73	
			184 43
28	Paid Tom Jack, freight to Columbia		4 50
June 5	Paid Norwood your account at Tremont		9 50
8	Paid labor on cotton		62
1	Freight from plantation to Quintana, on 154 bales, $3, cotton	462 00	
	From Brazos to Galveston, on 12 bales, $12	18 00	
			480 00
	1 month's interest to 1st July		4 00
	Your draft favor Dumon, $300, 5 per cent. advance, $15		315 00
	1 month's interest		2 50
	Paid your order on S. L. Jones, in goods		170 00
	Weighing 12 bales cotton, 10 cents, labor, 6¼ cents		1 95
13	Paid for guitar strings		1 00
	Amount due McK. & W., this date		$2,896 91
	E. and O. E.		
	Galveston, July 1st, 1840.		
	McKINNEY & WILLIAMS.		
	Per JAMES P. COLLINS.		
July 27	To freight from Quintana, on 26 bales cotton, $1 50		39 00
			$2,935 91
	Deduct overcharge on freight, 154 bales cotton from plantation		77 00
			$2,858 91

Received payment by note, dated 1st July, 1840, at one day's date.
McKINNEY & WILLIAMS.
Per JAMES P. COLLINS.

$10,949 48. FORT BEND CITY, *September* 1, 1840.

On or before the 1st day of March, 1841, for value received, I promise to pay to McKinney & Williams, or to their order, ten thousand nine hundred and forty-nine $\frac{48}{100}$ dollars, negotiable and payable at their counting-house at Quintana.

No. 126. [Name torn off.]

DR. *David Randon in account with McKinney and Williams.*

To amount of his due bill delivered him	$2,858 91
Amount due for negroes as follows, viz:	
$5,000, five thousand dollars due 16th February, 1839	5,000 00
Interest on the above $5,000 from 16th February, 1839, to 1st September, 1840, being one year six and half months, at 10 per cent. per annum	791 66⅔
$6,800 due on the negroes above mentioned, 1st January, 1840	6,800 00
Interest on same from 1st January, 1840, till 1st September, 1840, 8 months, a 10 per cent	454 33⅓
Total amount due 1st September, 1840	$15,904 91

CR.

By 154 bales of cotton, supposed to average 500 lbs., 77,000 lbs.	$5,390 00
The above credit of cotton only being a supposed weight, is to be corrected when the weights are correctly ascertained.	
	10,514 91
Interest on the amount of proceeds of cotton, 2 months, July and August, say $5,390, at 10 per cent. per annum	86 83
	10,428 08
Interest on the above till March, 1841, at 10 per cent. per annum, 6 months from 1st September, 1840	521 40
	$10,949 48

Balance due and paid by note due 1st March, 1841.
September 1, 1840. McKINNEY & WILLIAMS.

DR. *David Randon in acct. current and interest acct. with McKinney, Williams & Co., to 1st January, 1842.*

		Days.	Interest.	Amount.
1840.				
March 1	To rent of plantation and hire of negroes for the year 1838, due 1st January, 1839	1095	$600 00	$2,000 00
Oct. 9	To cash paid Jos. Osterman, bill goods	448	1 11	8 63
Dec'r 2	To cash, your draft favor Bachelder & Bailey	394	18 05	166 66
Dec'r 17	To cash, your draft favor J. H. Herndon	379	5 20	50 00
Dec'r 17	To cash, your accept. E. McLean Faris draft	.....	6 43	62 00
19	To cash, you	377	3 10	30 00
1841.				
Jan. 15	To cash, your acct. due Mills & Bennett, due 1st January, 1841	365	267 10	2,671 91
Feb'y 8	To cash, your draft favor S. M. Swurson	326	38 26	383 00
March 2	To bill goods rec'd	304	16 00	188 61
April 9	To cash paid your acct. and Koont's draft on you	266	7 38	100 00
April 10	To cash, C. Powers' bill saddlery, Dec. 10, 29 68			
April 10	To cash ½, 4 sheep, 1 bull, 3 pigs.....312 50			
		385	43 50	412 18

Account—Continued.

		Days.	Interest.	Amount.
1841.				
April 14	To cash, Crawford & Sheppard, bill goods, 68 13 To cash, Galveston Drug Store.....38 88 To cash, 1 dozen hand-saw files.....1 25 To cash, Jos. Osterman bill.....2 50 To cash, Lillie & Barnard.....1 75	261	$8 12	$112 51
	To cash paid L. W. Groce for you.....	261	7 25	100 00
April 26	To cash, Gazley & Robinson pr. letter.....	249	4 08	61 67
May 1	To Jones, Ufford & Co. acct. tendered, due Nov. 17, 1840.....	409	100 66	896 85
May 14	To cash paid your draft favor F. Dean.....	231	3 21	50 00
June 12	To cash, you by draft on Geo. Allen & Co.....	202	8 25	150 00
June 21	To cash, at Houston, by C. Power.....	193	16 75	300 00
June 23	To cash, 21 lbs. harness leather.....	191	41	7 98
June 26	To cash paid you 21st inst.....	188	10 45	200 00
July 12	To cash, your acct. to Tremont House.....	172	09	3 00
July 19	To cash, your order favor Basset.....	165	2 75	100 00
	Forward.....	.....	$1,165 21	$8,055 00
	Amounts brought forward.....	.....	1,165 21	8,055 00
1841.				
Aug. 10	To cash paid Wilson for you.....	143	2 38	60 00
Sept. 29	To cash paid passage, June 19, 1841.....	195	26	5 00
	To commissioner advancing $5,026.54, 5 p. c....	.....	22 43	251 32
	To balance interest due to 1st January, '42.....	.....	.....	932 02
		.....	1,190 28	9,303 35
	To balance of acct. due 1st January, 1842.....	.....	.....	$5,740 44

[Cr.]

		Days.	Interest.	Amount.
1841.				
June 21	By your note given us, favor T. Toby, drawing interest from 14 April, 1841.....	261	$258 25	$3,562 91
	By amount forward.....	261	258 25	3,562 91
	By balance of interest.....	.....	932 03	5,740 44
			$1,190 28	$9,303 35

E. & O. E.

Galveston, December 1st, 1841.

McKINNEY, WILLIAMS & CO.,

Pr. J. P. McKINNEY.

David Randon in acct. and interest up to 1st January, 1843, with McKinney, Williams & Co., Galveston.

		Time. y. m. d.	Interest.	Amount.
1841.				
Dec. 1	To balance acct. current rendered, due 1st Jan., 1842	1 0 0	574 04	$5,740 44
Dec. 3	To paid Garcia & Co., bill sundries	1 0 27	5 87	54 68
Dec. 29	To paid passage pr. Victoria 5 00			
1842.	To paid Sydnor & Street, for corn mill and drayage 10 25	1 0 0	1 52	15 25
Jan'y 1	To bill with Geo. Allen & Co.	1 0 0	13 56	135 63
Feb. 10	To your draft for Swenson & Long	0 10 18	46 40	525 40
Feb. 15	To your note favor McK. & W., due 1st March, 1841	1 10 0	2,007 39	10,949 48
Feb. 16	To wharfage on 48 bales cotton, in December	1 0 0	48	4 80
	To freight paid on do	1 0 0	2 40	24 00
	To wharfage on 170 bales, August, 1841	1 4 0	3 40	25 50
	To paid freight on do., in June, 1841	1 6 0	12 75	85 00
	Consuls certificate $4; and weighing 10th August, 1841	1 4 0	1 94	14 62
	McKinney & Williams' act. 1st January, 1840	3 0 0	5 58	18 63
	Balance of interest extended			1,819 01
			$2,675 33	$19,412 44
1843.				
Jan'y 1	To balance due on this date, brought down			$11,163 64

Cr.

		Time. y. m. d.	Interest.	Amount.
1842.				
Feb. 16	By nett proceeds 25 bales cotton shipped to New Orleans, sold by M. D. Cooper & Co., due 25th June, 1841	1 6 5	$145 51	$961 18
March 2	By amt. charged you in former act., 21st June, 1841, for a letter of credit on Power & Ruthven, at Houston	1 6 9	45 75	300 00
June 17	By nett proceeds of 144 bales cotton shipped to Baltimore, pr. brig Reaper, in Aug. 12, 1841, due 20th November, 1841	1 1 11	581 76	5,222 82
Jan'y 1	By nett proceeds 24 bales cotton, [R] received in December, 1841, shipped to Baltimore per brig Reaper, due July 14, 1842	0 5 16	41 40	897 80
	By nett proceeds 24 bales cotton, D. Randon shipped as above, due July 7, 1842	0 5 24	41 90	867 00
	Balance of interest to his debit		1,819 01	
	Balance to our credit carried down, due 1st January, 1843			11,163 64
			$2,675 33	$19,412 44

E and O. E.
Galveston, Jan. 1st, 1843.

McKINNEY, WILLIAMS & Co.
By JAMES. P. COLLNS.

[Dr.] *D. Randon, esq., in acct. with McKinney and Williams.*

1843.			
Jan'y 1	To balance due for act. rendered		$11,163 64
	To interest on $9,344.63 a 10 p. c., to 1st Sept., 1846		3,426 35
1844.			
Feb. 14	To charges paid Geo. Allen & Co., on cotton	$74 00	
	To weighing, wharfage, &c.	3 83	
	To freight from Houston on 15 bales	11 25	89 08
	Interest on same to 1st September, 1846	22 30	22 30
			$14,701 37

Cr.

1843.			
Feb. 10	By negro boy Lewis	$600 00	
	By interest a 10 p. c. to 1st Sept. 1846	212 00	
Feb. 24	By goods sold by Geo. Allen & Co. $46 68		
	Interest thereon to the 1st January 1843 5 02	51 70	
	Interest on same to 1st September, 1846	18 95	
1844.			
Jan'y 13	By 5 bales cotton, 2523 lbs. a 10 c.	252 30	
	By interest on same to 1st September, 1846	66 22	
Feb. 14	15 bales cotton, 7401 lbs.		
	By 4000 lbs. a 7½ c. $300 00		
	3401 lbs. a 10 c. 340 10		
		640 10	
	By interest on same to 1st September, 1846	162 68	
	By this sum, agreed upon, to be allowed you for 25 bales cotton lost on the steamer Albert Gallatin	500 00	
	Interest on same to 1st Sept., 1846, say 4 years	200 00	
			2,703 37
	Balance due 1st September, 1846		$11,997 42

Myrtle Grove, August 30, 1846.

D. Randon, esq., in account current and interest account to February 10th, 1846, with Thomas F. McKinney.

[Dr.]

Date.		Time.	Interest.	Amount.
		Y. M. D.		
1844.				
Aug. 10	To 1 coil hemp rope, 150 lbs., at 17½ c.	1 6 7	$3 93	$26 25
31	To cash paid for 3 barrels lime	1 5 10	1 40	9 69
Oct. 7	To do. paid for freight on 19 bales cotton	1 4 3	1 70	12 75
14	To do. $80 exchequers, at 70 c.	1 3 26	7 37	56 00
1845.				
Jan. 20	To do. paid Geo. Allen & Co. draft, favor Captain Tichenor, for account 6 bales cotton, April 14, '44	1 0 20	1 58	15 00
20	Col. Woods, freight bill on 27 bales cotton		2 13	20 25
28	To compressing 27 bales cotton, at 50 c. 13 50			
	33 new ropes, put on same 4 13			
	repairing 5 bales 2 50			
		1 0 12	2 07	20 13

Date.		Time. Y. M. D.	Interest.	Amount.
1845.	To 12¼ yds. bagging, for repairing... $2 02			
	Certificate 2 00			
		–	$0 42	$4 02
Feb. 3	To do. amount your bill at Tremont House, Aug. 9, 1842.....	1 0 7	66	6 50
	To do. drayage 27 bales cotton to and from cotton press, at 8c. each way.....	–	43	4 32
11	To do. paid for consul's certificate to 23 bales cotton.....	1 0 0	20	2 00
13	To do. 2 wharfage on 27 bales cotton received from Houston, at 1 each	1 1 27	76	7 76
13	To T. F. McKinney's charges on cotton $89 08			
	To do. bill rope and bagging..... 63 90			
		–	15 20	152 98
17	To your order in favor S. M. Swinson, February 27, 1844 .....4279 25			
	Interest from date to February 18, 1845 ..... 22 12			
		11 23	29 58	301 37
18	To cash paid marking and sampling 23 bales	–	07	81
21	To do. $140 tax scrip, remitted in a letter at 90 cts.....	11 19	12 24	126 00
Mch. 10	To do. paid J. P. Doswell & Co., wharfage on 23 bales cotton	11	55	6 00
22	To T. Toby & Bogert's bill, charges on 23 bales cotton shipped to them per McKim, and reshipped to Hamburgh.....	10 18	6 27	70 42
31	To steamer Dayton, freight on 23 bales cotton, at 4.....	10 9	–	11 50
	To Thos. F. McKinney, board Jas. Randon, paid T. Borden in 1843 and 1844.....	–	5 02	47 00
	Amount carried forward.....	–	$91 51	$900 75
	To amount brought forward.....	–	91 51	900 75
Aprl. 21	To cash paid weighing and sampling 17 bales cotton.....	9 19	38	2 13
May 9	To do. wharfage on 17 bales cotton.....	9	16	2 13
June 3	To do. freight on 17 bales cotton.... $8 50			
	To do. passage horses and negroes up and down..... 15 00			
		7 13	–	23 50
	To do. drayage on 17 bales cotton.....	–	1 53	1 84
7	To Geo. Allen & Co., drayage on cotton $2 25			
	To Geo. Allen & Co., saddle paid for 30 00			
		7 9	1 96	32 25
Oct. 11	To bill, goods shipped per Spartan.....	3 29	–	109 72
	To bill, goods shipped per Spartan.....	–	6 07	73 51
Nov. 14	To 1 case brogans, 5 doz. at $9..... $45 00			
	drayage and wharfage..... 18			
	commission..... 1 14			
		2 26	1 09	46 32
15	To cash paid wharfage on goods per Spartan	2 25	03	1 20
18	To bill of goods, per str. Williams.....	2 22	1 56	69 00
Dec. 23	To H. H. Williams & Co., draft on Williams, Whitman & Co., Dec. 26, 1843....	21 14	38 23	180 00
	Thomas F. McKinney, per your order in favor Miss Warren, in June, 1842.....	3 7 10	45 13	125 00

Date.		Time.	Interest.	Amount.
		Y. M. D.		
[1846.]				
Jan. 5	To cash paid freight on goods per steamer Williams	1 5	$0 11	$10 10
10	To wharfage on goods	1 00	.01	1 25
21	To J. S. Stafford, for order on you for 2 months' hire of 6 negroes	19	63	120 00
Feb. 2	To str. Spartan, freight on 1 bundle shoes in December last	–	–	25
	To H. H. Williams, order on me for your account	8	2 22	1,000 00
6	To commission on the following amounts: Omitted to be charged 10-31, 1844 ..... $35 94 October 11, 1845 ..... 109 72			
	$145 66 at 2 pr. ct.	–	–	3 67
10	To balance interest account to date, at 10 p. c.	–	7 58	
	To balance due D. Randon, esq., carried down	–	–	798 54
	E. & O. E., Feb. 6, 1846.	–	$197 98	$3,501 26

[Cr.]

Date.		Time.	Interest.	Amount.
		Y. M. D.		
1844.				
May 21	By cash advance on 3 bales cotton	1 8 19	$12 76	$74 55
June 10	By cash advance on 5 bales cotton	1 8	25 83	155 00
1845.				
Mch. 8	By T. Toby & Bogert, for nett proceeds 27 bales cotton	11 2	58 11	630 36
22	By advance on 23 bales cotton shipped per McKim, and reshipped to Hamburgh, 10,685 pounds, at 4¼c	10 18	40 10	454 11
Apr. 22	By Clason, Illies & Co., 17 bales cotton sold them, weighing 8,663, at 5¼	9 18	36 37	454 80
	Amount carried forward	–	$173 17	$1,768 82
	By amount brought forward	–	173 17	1,768 82
Dec. 24	By excess on 3 bales cotton, the advance on which is credited May, 1844	1 16	13	9 85
	By 17 bales cotton, shipped per brig Union in May, 1844, advance received on same	–	5 49	430 45
	By excess on 37 bales shipped per brig Union	–	1 86	146 11
26	By 27 pairs shoes returned, of 5 dozen charged, November 14	1 14	19	16 20
1846.				
Feb. 5	By nett proceeds of 35 bales cotton, as per account sales rendered this day, due by average, December 15	1 25	17 14	1,122 25
	Balance interest account, your favor	–	$197 98	$3,501 26
	By balance your account to new account	–	–	$798 54

[Dr.] *D. Randon in acct. with Thos. F. McKinney.*

1846.			
Aug. 3	Wharfage and press charges on 12 bales, shipped to Bremen last December.....	.....	$3 00
	Advance on same credited to you in my former acct., now written back, and sales credited in this acct.....	$354 05	
	2½ p. c. commission paid on same, as on advance.....	8 64	
	Interest on same a 10 p. c. from Decem. 15, 1845, to 1st September, 1846, 8 months and 15 days.....	25 68	
			338 37
			$391 37

Cr.

1846.			
Jan'y 6	By balance due you, per acct. rendered this day.....	$798 54	
	By interest on same a 10 p. c., to 1st Sept., 1846.....	48 63	
Feb. 19	By balance received on 23 bales cotton, shipped by way of New Orleans, to Hamburg.....	181 66	
	By interest on same a 10 p. c., to 1st September, 1846....	9 58	
Aug. 3	By nett proceeds 12 bales cotton, shipped to Bremen, due 12th August, 1846.....	414 43	
	By interest on same, to 1st September, 1846.....	2 00	
Aug. 24	By nett advance received on 50 bales cotton, shipped to Liverpool, due 6th March, 1846.....	1,512 75	
	By interest on same a 10 p. c., to 1st September.....	72 39	
			3,039 98
	Balance due you, to be transferred to your credit with McKinney & Williams, as due 1st September, 1846.....	.....	$2,648 51

Myrtle Grove, Aug. 30th, 1846.

T. F. McKINNEY,
Per J. P. McKINNEY.

The defendant then gave in evidence the following letter, admitted by plaintiff's counsel to be in the handwriting of Thomas F. McKinney:

Piney Point, *24th Oct.*, 1846.

David Randon, esq.,

At Home.

Dear sir: Your proposition of yesterday I regarded as so entirely unreasonable, and coming from a man who knows and understands what is right, that I felt as if any conversation on the subject was unnecessary. Your proposition was nothing more nor less than that I should give you one-half of the negroes for nothing for three *negroes*, and the money paid Power for you is worth half the negroes. If you will send to Houston all the African negroes and their children, and the 15 bales of cotton within three weeks from this time, I will give you your note and the amount paid Power, near $14,000; otherwise I must seek to obtain justice as I can.

Respectfully,

T. F. McKINNEY."

The defendant then introduced Thomas F. McKinney, who gave in evidence as follows: "The cotton obligation" spoken of by the witness, John Randon, was the same which was shown to him, and which had previously been introduced in evidence by the plaintiff, marked "No. 3."

Being asked the consideration of the two promissory notes on which suit was brought, he said: That in the year 1839 or 1840, witness sold to David Randon certain African negroes, which were then owned in three equal shares—one by Thomas Toby; one by Andrew Hodge; the third by McKinney and Williams; that previously thereto there had been dealings between Randon and McKinney and Williams; and on the 1st day of September, 1840, Randon executed his note to McKinney and Williams for near eleven thousand dollars; that the said note covered and included the whole amount of the purchase money for the negroes, except a small balance, which was in Randon's favor on account of their previous dealings, and which was deducted from it. Witness included Toby's share of the purchase money of said negroes in the note as agent of Toby, and that the said note was given for a balance of account due by Randon to McKinney and Williams, rendered 1st September, 1840, in which account was entered the whole purchase money of the said negroes, including both Toby's and Hodge's share; and Toby was interested in the note to the amount of his interest in the negroes, and Randon knew of Toby's interest in the note and in the negroes.

Randon did not pay the note according to promise, and it became disagreeable to be importuned in regard to it, and I told him he must settle the matter with Toby himself. Randon then executed the two notes, which are the ones sued on; and he was credited for the amounts of said notes on the account of McKinney and Williams against him, in a running account for the years 1841 and 1842; the items of which account were all for merchandise, supplies, money, &c. The next year McKinney and Williams, in their account current against Randon, included and embraced the whole amount of the note for near eleven thousand dollars, before spoken of. The notes were credited on the account for merchandise of McKinney and Williams, and not on the note which Randon had given. These accounts were afterwards, at the close of each year, rendered to Randon, and no objection offered by him as to the manner in which the credit was made. Toby had no interest, whatever, in the merchandise of McKinney and Williams. The notes here sued on were executed by Randon to Toby, and were given for the amount due to Toby for Toby's interest in the said African negroes. The negroes sold to Randon were called Africans; they seemed to be fresh Africans, and not accustomed to work. "They were imported to Texas by Col. Fannin, in 1835;" and M. J. Keenan, John Duncan, and Abram Sheppard were jointly interested in their importation with Fannin. They were landed near the mouth of the Brazos river, and a division was there made of the negroes among those importing them. Witness had been authorized by Toby, the plaintiff, and Hodge, to make any investment on joint account in Texas, that he

[Dr.] *D. Randon in acct. with Thos. F. McKinney.*

1846.			
Aug. 3	Wharfage and press charges on 12 bales, shipped to Bremen last December.....	.....	$3 00
	Advance on same credited to you in my former acct., now written back, and sales credited in this acct.....	$354 05	
	2½ p. c. commission paid on same, as on advance.....	8 64	
	Interest on same a 10 p. c. from Decem. 15, 1845, to 1st September, 1846, 8 months and 15 days.....	25 68	
			338 37
			$391 37

Cr.

1846.			
Jan'y 6	By balance due you, per acct. rendered this day.....	$798 54	
	By interest on same a 10 p. c., to 1st Sept., 1846.....	48 63	
Feb. 19	By balance received on 23 bales cotton, shipped by way of New Orleans, to Hamburg.....	181 66	
	By interest on same a 10 p. c., to 1st September, 1846....	9 58	
Aug. 3	By nett proceeds 12 bales cotton, shipped to Bremen, due 12th August, 1846.....	414 43	
	By interest on same, to 1st September, 1846.....	2 00	
Aug. 24	By nett advance received on 50 bales cotton, shipped to Liverpool, due 6th March, 1846.....	1,512 75	
	By interest on same a 10 p. c., to 1st September.....	72 39	
			3,039 98
	Balance due you, to be transferred to your credit with McKinney & Williams, as due 1st September, 1846.....	.....	$2,648 51

Myrtle Grove, Aug. 30th, 1846.

T. F. McKINNEY,
Per J. P. McKINNEY.

The defendant then gave in evidence the following letter, admitted by plaintiff's counsel to be in the handwriting of Thomas F. McKinney:

Piney Point, *24th Oct.*, 1846.

David Randon, esq.,
At Home.

Dear sir: Your proposition of yesterday I regarded as so entirely unreasonable, and coming from a man who knows and understands what is right, that I felt as if any conversation on the subject was unnecessary. Your proposition was nothing more nor less than that I should give you one-half of the negroes for nothing for three *negroes*, and the money paid Power for you is worth half the negroes. If you will send to Houston all the African negroes and their children, and the 15 bales of cotton within three weeks from this time, I will give you your note and the amount paid Power, near $14,000; otherwise I must seek to obtain justice as I can.

Respectfully,

T. F. McKINNEY."

The defendant then introduced Thomas F. McKinney, who gave in evidence as follows: "The cotton obligation" spoken of by the witness, John Randon, was the same which was shown to him, and which had previously been introduced in evidence by the plaintiff, marked "No. 3."

Being asked the consideration of the two promissory notes on which suit was brought, he said: That in the year 1839 or 1840, witness sold to David Randon certain African negroes, which were then owned in three equal shares—one by Thomas Toby; one by Andrew Hodge; the third by McKinney and Williams; that previously thereto there had been dealings between Randon and McKinney and Williams; and on the 1st day of September, 1840, Randon executed his note to McKinney and Williams for near eleven thousand dollars; that the said note covered and included the whole amount of the purchase money for the negroes, except a small balance, which was in Randon's favor on account of their previous dealings, and which was deducted from it. Witness included Toby's share of the purchase money of said negroes in the note as agent of Toby, and that the said note was given for a balance of account due by Randon to McKinney and Williams, rendered 1st September, 1840, in which account was entered the whole purchase money of the said negroes, including both Toby's and Hodge's share; and Toby was interested in the note to the amount of his interest in the negroes, and Randon knew of Toby's interest in the note and in the negroes.

Randon did not pay the note according to promise, and it became disagreeable to be importuned in regard to it, and I told him he must settle the matter with Toby himself. Randon then executed the two notes, which are the ones sued on; and he was credited for the amounts of said notes on the account of McKinney and Williams against him, in a running account for the years 1841 and 1842; the items of which account were all for merchandise, supplies, money, &c. The next year McKinney and Williams, in their account current against Randon, included and embraced the whole amount of the note for near eleven thousand dollars, before spoken of. The notes were credited on the account for merchandise of McKinney and Williams, and not on the note which Randon had given. These accounts were afterwards, at the close of each year, rendered to Randon, and no objection offered by him as to the manner in which the credit was made. Toby had no interest, whatever, in the merchandise of McKinney and Williams. The notes here sued on were executed by Randon to Toby, and were given for the amount due to Toby for Toby's interest in the said African negroes. The negroes sold to Randon were called Africans; they seemed to be fresh Africans, and not accustomed to work. "They were imported to Texas by Col. Fannin, in 1835;" and M. J. Keenan, John Duncan, and Abram Sheppard were jointly interested in their importation with Fannin. They were landed near the mouth of the Brazos river, and a division was there made of the negroes among those importing them. Witness had been authorized by Toby, the plaintiff, and Hodge, to make any investment on joint account in Texas, that he

thought proper; and witness purchased, on joint account, of Toby, Hodge, and McKinney, and Williams, twenty-eight negroes out of the lot of M. J. Kenan immediately after the division, and took the title in his own name. They were all young negroes, from about twelve to twenty-five years of age; there was but one grown one among them. He subsequently sold a part of these negroes to Randon, and Randon was charged in the account current of McKinney and Williams with the full purchase money of the negroes. Toby and Hodge looked to witness, or McKinney and Williams, for the result of the speculation. Some lands were also purchased on the same account, and titles taken in the name of witness or McKinney and Williams. The transactions were not in the name of Toby and Hodge, but in the name of witness and McKinney and Williams, in whom was the legal title. Toby and Hodge had no claim on Randon except through witness or McKinney and Williams, until witness took the notes sued on from Randon to Toby.

Being asked what amount of indebtedness was discharged by David Randon in his settlement with Ephraim McLean, he said: "Between nine and ten thousand dollars." "Witness did not hold any note or notes against Randon in his individual name at the time of the settlement with Randon." There had been many transactions and a long account between witness and Randon, but witness individually was considerably in Randon's debt; the accounts will show how much witness had offered, a few days before, to settle with Randon, and for one negro and fifteen bales of cotton, in addition to what was received; witness had offered to discharge an amount of indebtedness equal to about 14,000 dollars. McLean had made a better settlement with Randon than witness could have done. In the settlement between McLean and Randon the Power debt was not settled. The Power debt did not belong to witness, nor McKinney and Williams. Witness has paid one thousand dollars on account of that debt, and charged it in his account with Randon. The Power debt was an open account of Power against Randon, amounting to about four thousand dollars.

Being cross examined by the plaintiff's counsel, said counsel asked and demanded of said witness:

"To what note or notes, from David Randon to Thomas Toby, the instrument in writing dated March 14th, 1844, and filed with the plaintiff's amendment to his petition, marked 'No. 3,' and fully set forth in the bill of exceptions number one, referred." And the said Thomas F. McKinney thereupon stated, and gave in evidence before the jury, that the said writing referred to both of the promissory notes sued on, being the same filed with the amended petition, marked "1 and 2," and fully set forth in the bill of exceptions No. one, heretofore filed in this cause. Whereupon the counsel for the defendant insisted before the court, and moved the court that the said evidence of the said McKinney should be ruled out and withdrawn from the jury, because the same was contradictory to the said writing, marked "No. 3," as aforesaid, which it pretended to explain—the said writing referring only to one note from David Randon to Thomas Toby.

But the court overruled the said motion of the said defendant's coun-

sel, and permitted the said evidence of the said McKinney to remain before the jury. To which opinion and ruling of the court overruling the said motion, and permitting the said evidence to remain before the jury, the said defendant, by his counsel, excepted, and tendered this his third bill of exceptions, which he prays may be signed, sealed, and made a part of the record in this cause; which is done accordingly.

Saturday, December 23d, 1848.

JOHN C. WATROUS. [SEAL.]

Fourth bill.

DISTRICT COURT OF THE UNITED STATES,
District of Texas.

THOMAS TOBY
vs.
DAVID RANDON.

December term, 1848.

Be it remembered, that on the trial of this cause, after the jury were sworn to try the issue joined, the plaintiff and defendant, to maintain the said issues on their respective parts, gave the evidence which is contained in the bills of exceptions, numbers one, two, and three, heretofore filed in this cause; whereupon the said plaintiff further to maintain his said issues, examined Thomas F. McKinney, who gave in evidence as follows:

In the settlement between McLean and Randon, only the accounts and dealings between the firm of McKinney and Williams, and Thomas F. McKinney, individually, with David Randon were included; the notes from Randon to Toby were not included; witness did not at the time hold in his possession the notes to Toby; he had not at the time any authority to make any settlement of the Toby notes with Randon; in the settlement with Randon, witness took back all the African negroes, except two, and has since sold them for less than he allowed Randon for them.

And thereupon the said defendant, further to maintain the said issues on his part, re-examined the said Thomas F. McKinney, who gave in evidence before the jury, as follows:

At the time the instrument in writing, dated March 14th, 1844, marked "No. 3," was executed, witness did not have in his possession or control the notes to Toby now sued upon; he supposes they were in Toby's possession; but witness thought it his duty, as he had taken the notes and been connected with the matter, not to see Toby wronged, and to protect his rights against the statute of limitations.

The defendant then read in evidence the deposition of Abraham Sheppard, as follows:

In March or April, 1835, I went to Cuba in company with Col. Fannin; we purchased some negroes, one hundred and fifty-two, which were imported into Texas by Col. Fannin, who was interested with myself, John Duncan, and M. J. Kenan, as owners of them; we purchased said negroes in or about the month of April, 1835, about

three miles southwest of the city of Havana, at a place called the Barracoon, or an enclosure which was used for the purpose of keeping securely slaves of that description, recently imported and kept for sale; from their appearance, and from representations made by the owners of them, they had been but recently brought to Cuba, before we bought them, say some ten or twenty days; the owners of said negroes represented to us that they were imported from Africa in a slaver, which they kept for that purpose; and stated that they, the said owners, had a partner in Africa, who attended to that part necessary to purchase them; I believe it was correct, for they were all naked, heads were shaved, and they could not speak English or Spanish; they were called the Gold Coast or Lucoma tribe, and were recommended as being superior to other tribes; and on further reflection, I feel sure that said negroes were landed in Cuba after I went there, for when I first landed the owners of these slaves requested me to wait a short time, and that they expected a cargo of slaves from Africa soon, and when they were landed, I called to see them and purchased as above stated, assisted by Colonel Fannin; they were the Gold Coast or Lucoma tribe, and natives of Africa, as represented by the owners of whom we purchased them, and had been but a short time in Cuba; the owners of the said slaves represented to myself and Col Fannin that they were imported from Africa in a regular slaver or vessel, which they kept for the purpose; I believed, and still believe, they were Africans, from the say so of their owners, from their appearance, and from the circumstances necessarily attending their landing from a vessel after I arrived there, and from the fact of their language and confinement in this enclosure or wall, called the Barracoon; witness saw *of* the same negroes on the premises of David Randon several years ago; Randon appeared to be exercising acts of ownership over them; does not know of his own knowledge from whom Randon purchased, or how many he had. [The counsel for the plaintiffs in season objected to all that portion of Sheppard's testimony which states the representations of others, and particularly that portion which states the representation of the owner of the slaves as to the particular character or tribe of the negroes, but the testimony was admitted.] The above lines within brackets *was* inserted in this bill by the order of the court, and contrary to the opinion of the counsel for the defendant, who contend that it forms no proper part of a bill of exceptions.

The defendant then gave in evidence the deposition of Leander H. McNeal, as follows:

Witness believes he is acquainted with the subject matter in controversy; knows that David Randon, some time before 1840, purchased some fifteen or sixteen negroes, being a portion of a lot of negroes which witness would afterwards describe, and if he was not mistaken this suit is for the recovery of a portion of the purchase money; in the latter part of the spring, or in the beginning of the summer of 1835, witness saw Col. Fannin land a lot of negroes near the mouth of the Brazos river; they were imported by him into Texas; Col. Fannin told witness that he, John Duncan, M. J. Keenan, and Abram Sheppard, were the

owners of them; I heard Col. Fannin say that he purchased those negroes near Havana, in the Island of Cuba; he said they had just been landed from a slave ship from the coast of Africa only a few days before he purchased them; he brought them immediately to Texas; he said they were Africans; I saw said negroes; I was among them as soon as they were landed; they appeared to be native Africans, and not natives of Cuba; the facts which came under my own observation to convince me that they were native Africans are these: they spoke neither the Spanish language nor the English language; they had the marks of Africans on their persons; they never had been taught to labor; many of them would throw off their clothes, and when naked were perfectly shameless; they were in every respect like other negroes which I have seen immediately from Africa; I am well acquainted with the difference in manners and appearance between Africans and other negroes; I have owned African negroes more than twelve years; and there are many other Africans in my immediate neighborhood with whom I am well acquainted; I have owned American negroes all my life; a portion of the above described African negroes were sold to David Randon; I think about fifteen in number; I think eleven or twelve of those landed and their increase, amounting to about fifteen or sixteen, were sold to Randon; they were sold by Thomas F. McKinney and others interested with him, to Randon.

The defendant then introduced Benjamin C. Franklin, who gave in evidence as follows:

That some time in the spring or summer of 1835, he saw a lot of negroes near the mouth of the Brazos river, which had been imported into Texas a few days before by Col. Fannin, and belonged to Fannin, M. J. Keenan, and others; most of the negroes were naked; many were tattoed, and their manners and behavior indicated a total absence of civilization; these were called African negroes, and witness then believed them to be such; they did not speak English or Spanish; witness has never been in Africa nor Cuba, but he has seen in Texas a great number of negroes who are called Africans; all he knows about the African negroes he has learned in Texas.

The defendant then introduced Charles Givens, who gave in evidence as follows:

Witness was well acquainted with the African negroes which Thomas F. McKinney sold to David Randon; very soon after they were landed in Texas, they were placed on a plantation of which witness had charge; most of them were tattoed; they did not understand any kind of labor, such as is performed in our country; their manners were wild and savage; they spoke a lingo which was neither Spanish nor English; they were always called Africans, and witness believed them to be fresh Africans; there are a great many slaves in this State called Africans; witness has never been in Africa or Cuba, and all he knows about African negroes is from seeing slaves in the country called Africans.

The defendant, by his counsel, further to maintain certain of the said issues on his part, then offered to give in evidence a duly authenticated

copy of the record of proceedings in the cause of Thomas Toby, and Thomas Toby and Brother, against their creditors in the first judicial district court of the State of Louisiana, now transferred by the laws of the said State to the fifth district court of New Orleans, in said State, which was in the words and figures following, to wit:

STATE OF LOUISIANA,
Fifth district court of New Orleans.

THOMAS TOBY, and Thomas Toby and Brother,
vs.
THEIR CREDITORS.
No. 19,579.

Petition filed 8th October, 1840.

To the honorable the first judicial district court of the State of Louisiana.

The petition of Thomas Toby, residing in the parish of Jefferson, and Samuel Toby, residing in Philadelphia, and lately doing business as merchants in New Orleans, under the firm of Thomas Toby and Brother, and also in his individual name, shews: That owing to great losses in trade, and heavy obligations contracted for others, and no funds provided to meet such obligations, and to other losses set forth in the schedule hereto attached and referred to as part of this petition, he and said firm find themselves unable to pay their debts.

Wherefore your petitioners pray that a meeting of their said creditors be ordered to be held at such place and at such time as this honorable court may designate, then and there to take into consideration the situation of their affairs, and surrender to them their property, and that *all* in the mean time all kind of judicial proceedings against their persons and property be stayed.

(Signed) LOCKETT & MICON,
Attorneys for petitioners.

2686

SCHEDULE

ANNEXED TO

THE PETITION.

[*Schedule annexed*

Statement of the affairs and schedule of the estate, active and passive, Orleans, on the 7th

Liabilities—

By whom drawn.	In whose favor.	Acceptors.	Holders—Creditors.
McKinney & Williams	W. Walthingham.....	T. Toby & Bro.	1 James Hure.....
Ditto	And'w Hodge, jr.....	Ditto	2 Andrew Hodge, jr...
Thos. Toby & Bro....	Ditto	.....	Ditto
Ditto	S. W. Oakey & Co.....	.....	3 S. W. Oakey & Co..
McKinney & Williams	Ditto	T. Toby & Bro.	Ditto
Ditto	Ditto	Ditto	Ditto
Ditto	Ditto	Ditto	Ditto
Ditto	Ditto	Ditto	Ditto
Ditto	Ditto	Ditto	Ditto
Ditto	Bridge & Vose.....	Ditto	4 Bridge & Vose.....
Ditto	Ditto	Ditto	Ditto
Ditto	W.F.& E.D. Hyde & Co.	Ditto	5W.F.&E.D.Hyde&Co
Ditto	Hotchkiss & Co.....	Ditto	6 Hotchkiss & Co.....
Ditto	Hissane & Co.....	Ditto	7 Kissam & Co.....
S. B. Brigham & Co..	Ditto	Ditto	Ditto
W. C. White & Co...	Ditto	Ditto	Ditto
McKinney & Williams	Freeland & Hitchcock...	Ditto	8 Freeland Hitchcock..
Ditto	Ditto	Ditto	Ditto
Ditto	Layton & Co.....	Ditto	9 W. C. Hyde.....
Ditto	Ditto	Ditto	Ditto
Ditto	Ditto	Ditto	Ditto
Ditto	Talmadge & Van Pelt...	Ditto	10 Talmadge & Van Pelt
Ditto	H. N. Pollard & Co....	Ditto	11 H. N. Pollard & Co..
Ditto	Smith Hubbard & Co...	Ditto	12 Smith Hubbard & Co
Ditto	Fellows Cargill & Co...	Ditto	13 Fellows Cargill & Co.
W. C. White & Co...	Ditto	Ditto	Ditto
McKinney & Williams	John Duncan & Co.....	Ditto	14 John Duncan & Co..
Ditto	H. Costar & Co.....	Ditto	15 H. Costar & Co.....
Ditto	Ditto	Ditto	Ditto
Ditto	Baker Johnson & Co....	Ditto	16 Baker Johnson & Co.
Ditto	H. W. Carey & Co.....	Ditto	17 H. W. Carey & Co..
Ditto	J. Greenfield & Son.....	Ditto	18 J. Greenfield & Son..
W. C. White & Co...	Ditto	Ditto	Ditto
Ditto	E. B. Graniss & Co.....	Ditto	19 E. B. Graniss & Co..
McKinney & Williams	Ditto	Ditto	Ditto
McKinney & Williams	W. C. White & Co.....	T. Toby & Bro.	20 Parish & Co.....
W. H. Bynum.....	John A. Wharton.....	Ditto	21 Wilcox, Anderson & Co

to the petition.]

of Thomas Toby and Thomas Toby & Brother, of the city of New day of October, 1840.

Bills payable.

Residence of holders.	When due. Month.	D'y.	Year.	Amounts.		Remarks.
New Orleans.	June	21	1836	.....	$3,570 00	Judgment.
Ditto	June	25	1836	$4,900		
Ditto	Nov.	28	1840	3,800		[$5,741 95.
					8,700 00	Due by him on open account,
Ditto	Nov.	15	1836	1,038 99	.....	Judgment.
Ditto	June	27	1836	9,142 28	.....	Ditto
Ditto	August	30	1836	2,647 94	.....	Ditto
Ditto	October	17	1836	902 66	.....	Ditto
Ditto	Dec'r	1	1836	1,350 12	.....	Ditto
Ditto	March	27	1837	807 32	.....	Ditto
					15,889 31	Due by them on open account, $6,312 98.
Ditto	June	30	1836	994 84		
Ditto	Dec.	1	1836	1,737 02		
					2,731 86	Judgment.
Ditto	July	2	1836	.....	1,256 11	Ditto.
Ditto	July	23	1836	.....	488 04	Ditto.
New York..	July	29	1836	2,706 50		
Ditto	July	18	1836	1,140 02		
Ditto	March	3	1837	1,187 55		
					5,034 07	Supposed to be settled by McKinney & Williams in Texas.
Ditto	August	17	1836	416 27		
Ditto	August	17	1836	382 58		
					798 85	
New Orleans.	August	7	1836	1,645 81		
Ditto	October	4	1836	1,582 39		
Ditto	Jan'ry	19	1837	1,178 70		
					4,406 90	
New York...	August	17	1836	.....	3,214 72	
New Orleans.	August	21	1836	.....	178 46	
Ditto	Sept.	28	1836	.....	484 46	Judgment.
New York...	Nov.	5	1836	1,941 30		
Ditto	Nov.	5	1836	1,152 64		
					3,093 94	
New Orleans.	Nov.	30	1836	.....	612 10	Due by them on open acct. $206 20.
New York...	Jan'ry	30	1837	2,058 30		
Ditto	Jan'ry	30	1837	3,520 70		
					5,589 00	
Ditto	Feb'y	4	1837	.....	9,438 03	
Ditto	Feb'y	25	1837	380 38		
Ditto	Feb'y	27	1837	4,480 76		
Ditto	Feb'y	27	1837	725 51		
					5,206 27	
Ditto	March	4	1837	2,000 00		
Ditto	March	4	1837	3,100 00	5,100 00	
				Forward..	76,172 50	
	Amou	nt b	rought	forward....	76,172 50	
Ditto	March	4	1837	.....	7,800 00	Judgment.
New Orleans.	July	17	1836	.....	1,000 00	

Statement—

Bills

By whom drawn.	In whose favor.	Acceptors.	Holders—Creditors.
McKinney & Williams	Hall & Brown.....	T. Toby & Bro.	22 Hall & Brown.....
Ditto	Ditto	Ditto	Ditto
Ditto	Jackson Durell & Co....	Ditto	23 Jackson Durell & Co.
W. C. White & Co..	Ditto	Ditto	Ditto
McKinney & Williams	Booram & Co.....	Ditto	24 Booram & Co.....
Ditto	Ditto	Ditto	Ditto
E. Bailey.....	Malcolm & Sanderman..	Ditto	25 Malcolm & Sanderman
Ditto	Newkirk & Olden.....	Ditto	26 Newkirk & Olden....
Ditto	Parmle & Baker.....	Ditto	27 Parmle & Baker.....
Ditto	N. G. Cochran.....	Ditto	28 N. G. Cochran.....
Ditto	S. A. Belden.....	Ditto	29 S. A. Belden.....
Ditto	Ditto	Ditto	Ditto
Ditto	J. Littlefield & Co.....	Ditto	30 J. Littlefield & Co ...
Ditto	E. Bailey.....	Ditto	.....
Ditto	Ditto	Ditto	.....
Ditto	R. H. Semmons & Co..	Ditto	31 R. H. Simmons & Co.
Ditto	Whitney & Slark	Ditto	32 Witney & Slark.....
Ditto	James Magee & Co.....	Ditto	33 James Magee & Co..
Bevan & Humphreys.	Bevan & Humphreys...	Ditto	34 Bevan & Humphreys
Ditto	Ditto	Ditto	Ditto
Cole & Cogley	Baker & Moss.....	Ditto	35 Moss & Samuel, assig's
Ditto	Thomas Elmes & Co...	Ditto	36 Thomas Elmes & Co.
Ditto	Everly & Rees.....	Ditto	37 Everly & Rees.....
Ditto	L. W. Sexton	Ditto	38 L. W. Sexton.....
Ditto	Klein & Bro.....	Ditto	39 Klein & Bro.....
Ditto	E. Powhattan.....	Ditto	40 E. Powhattan.....
Ditto	J. F. Pleiss & Co.....	Ditto	41 E. F. Pleiss & Co....
Ditto	C. Bradbury.....	Ditto	42 C. Bradbury.....
Ditto	J. W. Swain & Co.....	Ditto	43 J. W. Swain & Co...
Ditto	S. Rhoades.....	Ditto	44 S. Rhoades .....
W. C. White & Co...	W. B. Sweeney.....	Ditto	45 W. B. Sweeney.....
Ditto	McKinney & Williams..	Ditto	.....
Thos. Toby & Bro...	Jedediah Leeds.....	Ditto	46 Jedediah Leeds.....
Ditto	Ditto	Ditto	Ditto
Ditto	M. Maher.....	Ditto	47 M. Maher.....
Ditto	John H. Graham.....	Ditto	48 John H. Graham....
Ditto	D. Arguin & Bro's.....	Ditto	49 D. Arguin & Bro....
Ditto	Louis'a Sugar Ref'y & Co.	Ditto	50 La. Sugar Ref'y & Co.
Ditto	Lavellebeuve & Walton.	Ditto	51 Lavellebeuve & Walton
Ditto	Caruthers, Harris & Co.	Ditto	52 Caruthers, Harris & Co
Ditto	A. Lanfear.....	Ditto	53 A. Lanfear.....
Ditto	J. H. Field & Co.....	Ditto	54 J. H. Field & Co....

Continued.

payable.

Residence of holders.	When due.			Amounts.		Remarks.
	Month.	D'y.	Year.			
New York..	April	8	1837	$2,150 52		
Ditto	April	8	1837	1,152 43		
					$3,302 95	Judgment.
Ditto	April	29	1837	1,712 77		
Ditto	April	29	1837	1,099 23		
					2,812 00	
Ditto	May	9	1837	2,515 06		
Ditto	May	10	1837	3,737 17		
					6,252 23	Supposed to have been settled
New Orleans.	July	28	1836	.....	411 08	by McKinney & Williams.
Ditto	Sept.	30	1836	.....	500 00	
Ditto	Dec.	18	1836	.....	424 84	Judgment.
Ditto	Dec.	21	1836	.....	509 82	
Ditto	Dec.	23	1836	1,814 27		
Ditto	Jan'y	31	1837	123 12		
					1,937 39	
Ditto	Dec.	28	1836	.....	329 40	
.....	Jan'y	17	1837	.....	392 18	
.....	Jan'y	18	1837	.....	717 58	
.....	Jan'y	18	1837	.....	278 32	
Ditto	Jan'y	19	1837	.....	520 43	
Ditto	Jan'y	19	1837	.....	298 86	
Philadelphia..	Sept.	7	1836	2,000 00		
Ditto	Oct.	7	1836	2,000 00		
					4,000 00	Due them on open account, $1,040 59.
Ditto	Sept.	21	1836	.....	1,967 06	Judgment.
Ditto	Sept.	22	1836	.....	962 79	Do.
Ditto	Sept.	22	1836	.....	614 92	
Ditto	Sept.	24	1836	.....	1,852 19	Judgment.
Ditto	Sept.	24	1836	.....	228 04	
Ditto	October	1	1836	.....	367 16	
Ditto	October	1	1836	.....	199 35	
Ditto	October	6	1836	.....	1,645 77	Judgment.
New Orleans.	Feb'y	7	1836	.....	399 66	
Philadelphia..	October	1	1836	.....	497 30	
Texas	Feb'y	5	1837	.....	850 00	
.....	Feb'y	18	1837	.....	3,565 00	
New Orleans.	June	11	1836	395 33		
Ditto	August	21	1836	967 63		
					1,362 96	
Ditto	June	12	1836	.....	1,968 92	Judgment.
Ditto	June	12	1836	.....	868 82	Due by him in open account,
Ditto	June	23	1836	.....	550 17	$443 41.
Ditto	June	12	1836	.....	1,014 61	
Ditto	June	23	1836	.....	551 00	Judgment.
Ditto	June	29	1836	.....	920 00	
						Judgment.
				Forward..	$	
	Amount brought forward....					
New Orleans.	July	6	1836	.....	4,366 57	Judgment.
Ditto	July	8	1836	.....	618 10	

Statement—

Bills receivable.—

By whom drawn.	In whose favor.	Acceptors.	Holders.
Thomas Toby & Bro.	Byrne, Herman & Co...	T. Toby & Bro.	55 Byrne, Herman, & Co.
Ditto	Ditto	Ditto	Ditto
Ditto	Lafanta & Chalon.....	Ditto	56 Lafonta & Chalon....
Ditto	Ditto	Ditto	Ditto
Ditto	Chapman & Castillo....	Ditto	57 Chapman & Castillo..
Ditto	R. Growning & Co.....	Ditto	58 R. Groaning & Co...
Ditto	C. Follin.....	Ditto	59 C. Follin.....
Ditto	W. G. Hewes & Co....	Ditto	60 W. G. Hewes & Co..
McKinney & Williams	Stetson & Avery	Ditto	61 Stetson & Avery.....
Thos. Toby & Bro...	Rowland & Hart.....	Ditto	62 Rowland & Hart.....
Ditto	Hodge, Oxnard, & Co...	Ditto	63 Hodge, Oxnard, & Co.
Ditto	Byrnes, Stiff & Co.....	Ditto	64 Byrnes, Stiff, & Co...
Ditto	Ditto	Ditto	Ditto
Ditto	Hoskins & Wilcox.....	Ditto	65 Hoskins & Wilcox...
Ditto	H. Speering.....	Ditto	66 H. Spearing.....
Ditto	Samuel Toby.....	Ditto	67 Western Insurance Co.
Samuel Toby.....	Thos. C. Clark.....	Ditto	68 Estate of Tho.C. Clark
T. Toby & Bro.....	Samuel Toby.....	Ditto	Ditto
Ditto	Ditto	Ditto	69 Ocean Insurance Co..
Ditto	Harrod & Hughes.....	Ditto	70 Harrod & Hughes...
Ditto	Wm. McCawley.....	Ditto	71 Wm. McCawley.....
Samuel Toby.....	W. S. Boyd.....	Ditto	72 W. S. Boyd.....
Thos. Toby & Bro...	Samuel St. John, Jr.....	Dobson & Williams.....	73 Bank of Orleans.....
Ditto	Ditto	Ditto	Ditto
Ditto	Ditto	Ditto	Ditto
Ditto	Ditto	Ditto	Ditto
Ditto	Ditto	Ditto	Ditto
Ditto	Ditto	Ditto	Ditto
Ditto	Ditto	Ditto	Ditto
Ditto	Ditto	Ditto	Ditto
Ditto	Ditto	Ditto	Ditto
Ditto	Ditto	Ditto	Ditto
Ditto	Ditto	Ditto	Ditto
Ditto	Ditto	Ditto	Ditto
Ditto	Ditto	Ditto	Ditto
Ditto	Ditto	Ditto	Ditto
Ditto	Ditto	Ditto	Ditto
Wheelman & Hubbard	B. Wilson.....	T. Toby & Bro.	Ditto
Edward Henreck.....	Hall & Gaston.....	Ditto	Ditto
McKinney & Williams	Hodge, Oxnard, & Co...	Ditto	Ditto
James Haule.....	Bank of Orleans.....	Ditto	Ditto
Thomas Toby & Bro.	Ditto	Ditto	Ditto
Diito	Chubert & Shneeber....	Ditto	Ditto
Ditto	Frederick Buisson.....	Ditto	74 Frederick Buisson...

2109

Continued.

Continued.

Residence of holders.	When due. Month.	D'y.	Year.	Amounts.		Remarks.
Ditto	August	5	1836	$844 56		
Ditto	July	23	1836	2,454 28		
					$3,298 84	
Ditto	August	9	1836	1,054 73		
Ditto	October	10	1836	1,295 12		
					2,349 85	Due by them on open account $175 17.
Ditto	August	10	1836	.....	652 80	Judgment.
Ditto	August	11	1836	.....	1,914 00	
Ditto	August	14	1836	.....	430 88	
Ditto	August	17	1836	.....	1,770 33	Judgment.
Ditto	.....	.....	.....	.....	4,977 98	
Ditto	Sept.	2	1836	.....	955 83	Judgment.
Ditto	Sept.	19	1836	.....	2,239 49	
Ditto	October	17	1836	2,125 00		
Ditto	Nov.	15	1836	2,960 00		
					5,085 00	Judgment.
Ditto	Feb'y	11	1837	.....	754 00	Ditto.
Ditto	April	11	1837	.....	536 71	Ditto.
Ditto	.....	.....	.....	.....	525 00	
Ditto	Decem.	6	1836	639 66		
Ditto	Decem.	4	1836	1,149 78		
					1,789 44	
Ditto	May	15	1840	.....	870 00	
Ditto	Nov.	26	1838	.....	1,007 17	
Ditto	October	16	1840	.....	180 00	
Philadelphia.	April	23	1840	.....	100 00	
New Orleans.	March	1	1837	12,000 00		
Ditto	March	2	1837	5,000 00		
Ditto	March	3	1837	10,000 00		
Ditto	March	6	1837	8.000 00		
Ditto	March	10	1837	5,000 00		
Ditto	March	15	1837	5,000 00		
Ditto	March	17	1837	3,500 00		
Ditto	March	18	1837	5,000 00		
Ditto	March	20	1837	4,000 00		
Ditto	March	27	1837	9,900 00		
Ditto	April	2	1837	5,800 00		
Ditto	April	8	1837	2,600 00		
Ditto	April	13	1837	5,000 00		
Ditto	April	22	1837	5,000 00		
Ditto	April	29	1837	8,000 00		
Ditto	Nov.	25	1836	5,195 10		
Ditto	Nov.	25	1836	5,195 10		
Ditto	October	2	1838	4,400 00		
Ditto	Jan'y	31	1839	9,000 00		
Ditto	Feb'y	24	1838	11,500 00		
Ditto	Decem.	5	1839	1,700 00		
					130,790 20	Due by them for stock sold by them, payable $94,000.
Ditto	June	24	1839	.....	369 37	
				Forward..	293,486 86	

Statement—

Bills receivable.—

By whom drawn.	In whose favor.	Acceptors.		Holders.
McKinney & Williams				
Ditto	H. M. Hart & Co.....	T. Toby & Bro.	75	Eagle Insurance Co..
Ditto	Ditto	Ditto		Ditto
Ditto	Ditto	Ditto		Ditto
Cole & Cogley.....	Ditto	Ditto		Ditto
Thos. Toby & Bro...	J. A. Barilla.....	Ditto		Ditto
Ditto	Ditto	Ditto		Ditto
Thos. Toby & Bro....	.....	Dobson & Williams	76	Gas Light and Banking Co.....
Ditto	.....	Ditto		Ditto
Ditto	.....	Ditto		Ditto
Ditto	H. C. Cammack & Co..	Notes	77	H. C. Cammack & Co.
Ditto	Ditto	Ditto		Ditto
Ditto	Ditto	Ditto		Ditto
Thos. A. Morgan.....	Charles Harrod.....	T. Toby & Bro.	78	Chas. Harrod.....
Ditto	Ditto	Ditto		Ditto

Continued.

Continued.

Residence of holders.	When due. Month.	D'y.	Year.	Amounts.		Remarks.
				Amount br'o't forward	293,486 86	
New Orleans	July	2	1836	3,381 59		
Ditto	August	26	1836	819 06		
Ditto	Feb'y	27	1836	687 82		
Ditto	August	6	1836	2,123 50		
Ditto	July	7	1836	504 76		
Ditto	August	11	1836	701 82		
					8,218 55	
Ditto	March	27	1837	4,700 00		Due them on open act. $977.
Ditto	April	1	1837	5,500 00		
Ditto	April	22	1837	5,000 00		
					15,200 00	
Ditto	June	14	1836	2,000 00		
Ditto	July	25	1836	4,000 00		
Ditto	July	3	1836	2,400 00		
					8,600 00	
Ditto	June	12	1836	1,260 00		Due by them on open account $412 93.
Ditto	Sept.	12	1836	1,260 00		
					2,520 00	
				Dollars..	328,025 41	Due by T. A. M. on open account $3,255 05.

Book account.

Names creditors.	Residence.	Amount.	Remarks.
Lavellebeuve & Walton...	New Orleans	$103 75	
C. Follen.....	Ditto	171 50	
Bevan & Humphreys.....	Philadelphia	1,040 59	
Eagle Insurance Co.....	New Orleans	277 00	
79 Dobson & Williams....	Mobile.....	36,128 30	Provided they have collected from J. Cooper's estate the amount transferred to them.
80 James C. Cogley.....	Dead.....	8,842 66	
81 Mis. M. & Fire Insu. Co.	New Orleans	504 00	
82 B. B. Carey.....	Ditto	57 75	
83 Chabert & Shreeber....	Ditto	371 83	
84 E. Henreck.....	Montgomery, Alabama..	14,163 34	
85 J. P. Freeman & Co....	New Orleans	271 25	
86 Henderson & Gaines...	Ditto	229 25	
87 William Christy.....	Ditto	263 00	
88 J. T. Osbourne.....	Ditto	334 58	
89 Jas. H. Leverick & Co.	Ditto	205 49	
90 R. W. McHenry.....	Alabama...	80 50	
91 Mark Richards.....	Philadelphia	50 84	
92 C. P. Reff.....	Ditto	181 67	
93 Alfred Walley.....	New Orleans	620 95	
94 Hyde & Goodrich.....	Ditto	96 00	
95 Nicholas Hoey.....	Ditto	303 01	
	Forward..	64,297 26	
Amount brought forward....		64,297 26	
96 Roul & Wassam.....	New Orleans	350 90	
97 John Plank.....	Philadelphia	359 97	
98 Tarleton & Bullard...	Mobile.....	227 84	
99 Egerton & Webray...	New Orleans	292 58	Judgment, A. Rash, syndic.
100 William McKean....	Ditto	1,369 13	
101 J. P. Menard.....	Texas.....	413 47	
102 Schr. San Felipe and owners.....	Mobile.....	627 33	
103 Peters & Millard.....	New Orleans	149 50	
Hoge, Oxnard & Co..	Ditto	46 93	
104 Louis T. Caire.....	Ditto	23 50	
105 Theodore O. Stark....	Ditto	21 20	
106 First District Court...	Ditto	75 37	
Peters & Millard.....	Ditto	463 30	Individual debt of T. Toby.
107 Clapp's Church.....	Ditto	90 00	Ditto do.
108 Shipman.....	PassChrist'n	48 00	Ditto do.
109 Pritchard & Tagert...	New Orleans	43 75	Ditto do.
110 Steamer Neptune and owners.....	Ditto	45 00	Ditto do.
111 Mr. B. Mullen.....	Ditto	62 37	Ditto do.
112 W. T. Hepp.....	Ditto	83 25	Ditto do.
	Dollars.....	69,090 65	
Bank of Orleans.....	New Orleans	$24,000 00	For 60 shares Orleans Cotton Press stock pledged and afterwards taken to at per agreement.
Andrew Hodge, jr.....	Ditto	3,741 95	
S. W. Oakey & Co.....	Ditto	6,312 98	
John H. Graham.....	Ditto	443 41	
John Duncan & Co.....	Ditto	206 20	
John B. Budd.....	Philadelphia	4,046 29	This arises from our having debited him with $10,560 Texas land scrip, placed in his hands for sale, the proceeds of which to be accounted for by him.

Assets—Book Account—Continued.

Names.	Residence.	Amount.	Remarks.
Marshall & Cammack....	Mobile.....	$8,750 84	An order for this amount in hands of Dobson & Williams, Mobile.
McKinney & Williams...	Texas.....	166,272 86	
Benjamin Vincent.....	Mobile.....	5,202 88	
Simeon Toby, jr.....	Indiana....	819 03	
Maria Stansbury.....	New Orleans	13,397 25	Mortgage on slaves.
James Hanse.....	Ditto	1,911 88	
J. D. Baldwin.....	Texas.....	28 00	
Estate of Michael Krafft..	Mobile.....	10,026 97	
Charles Guisnard	New Orleans	39 40	
Estate of Ferguson & Hall	Ditto	516 67	
Louisa. Sugar Refinery Co.	Ditto	12 00	
Thomas Barrett & Co.....	Ditto	70 38	
N. & J. Dick & Co.....	Ditto	292 48	
J. L. Douglas.....	Ditto	20 00	
F. J. Forstall & Brother...	Ditto	60 00	
D. Augustin.....	Ditto	42 00	
Thomas J. Beck.....	Ditto	780 76	
H. B. Wells & Co.....	Ditto	429 12	
Charles Morgan.....	Ditto	25 00	
Smith & Allen.....	Texas.....	146 75	
Republic of Texas.....	Ditto	67,772 61	
Samuel Chapman.....	New Orleans	80 00	
Layton & Co.....	Ditto	202 15	
Brandes, McK. & Wright.	Ditto	26 62	Disputed freight bill.
J. H. Feild & Co.....	Ditto	50 38	
Captain Eldridge.....	Philadelphia	125 00	
Estate of Thos. Pashmead.	Ditto	235 76	
Cartell & Devereau.....	New Orleans	389 75	
D. F. Frederick.....	Ditto	1,551 25	
Lewis Levy.....	Ditto	434 04	
H. U. Severn.....	Ditto	65 00	
Slidell & Stewart.....	Ditto	28 00	Disputed.
Turner & Lewis.....	Ditto	90 14	
Perry & Hitchcock.....	Texas.....	133 52	
Forwarded....	.....	318,797 41	
Amount brought forward....		318,797 41	
L. H. Moore.....	Louisiana..	386 75	
R. N. McKinnell.....	New Orleans	7 00	
R. Davidson.....	Ditto	326 00	
John Sarpy.....	Ditto	183 00	
Jos. W. Smith.....	Ditto	56 81	
Sanford Page.....	Ditto	1 31	
General King.....	Kentucky..	51 00	
R. L. Bunker & Co.....	Philadelphia	31 40	
W. T. & E. R. Hyde & Co.	New Orleans	66 39	
William Bates.....	Texas.....	100 00	
Estate of J. Cooper.....	Mobile.....	8,500 00	For ¼ interest in Cit. Mill, Mobile.
Evariste Blanc.....	New Orleans	26 50	Disputed.
J. D. Craig.....	Ditto	60 63	
A. D. Gove.....	Ditto	1 05	
Shreve & Grayson.....	Texas.....	3,189 24	
Armstrong & Murphy....	New Orleans	6 00	
Alfred & Hendrick.....	Texas.....	439 61	
James Laurent & Son.....	New Orleans	28 00	
Martin, Pleasant & Co....	Ditto	58 21	Disputed freight bill.
Dart & Co.....	Natchez, Mi.	5,292 50	In hands of A. Hodge, jr., for collection.
——— Morphy.....	New Orleans	87 50	

Assets—Book Account—Continued.

Names.	Residence.	Amount.	Remarks.
M. Parageau	New Orleans	$5 50	
Doctor Carr	Ditto	121 51	
Mrs. Howard	Ditto	733 33	
M. G. Penn	Louisiana	62 50	
D. Murphy	New Orleans	433 75	
J. Neville	Ditto	39 00	
D. L. Bradford	Philadelphia	9 99	
E. Bailey	Texas	7,682 31	
W. C. White & Co.	Ditto	3,792 40	
S. & J. B. Forde	Lo'sville, Ky	18,042 65	
C. B. Rainey	Texas	102 09	
A. B. Homer	Mobile	113 30	
N. Mason	Texas	75 00	
Martineau, Cruger & Co.	New Orleans	42 50	
George Elderkin	Ditto	181 93	
J. Leadbeater & Sons	Philadelphia	1 05	
W. J. Mayo	New Orleans	7 25	Disputed freight bill.
J. B. Brigham & Co.	Texas	1,182 52	
J. G. Lewis	New Orleans	20 07	
Forward		370,344 95	
Forwarded		370,344 95	
Samuel Williams	Texas	186 06	
C. Rougnette's estate		6,782 12	
C. B. Stewart		2 90	
Robert Andrews		19 85	
J. B. Planche & Co.		16 80	
Richard Williams		8 00	
T. J. Sylvester		1 72	
Byrne, Herman & Co.		173 93	Disputed.
Alexander Dorsey		388 56	
Horton & Clements	Texas	41 88	
Cole & Cogley	Ditto	15,061 76	
J. W. Watson & Co.		65 50	
William Hallett		179 87	
Lafonta & Chalon		175 77	
Estate of George Burbank		59 50	
Est. of E. George, jr., & Co.		57 71	
Estate of A. L. Boismare		1,274 84	
White, Turpin & Nephews		14 37	
Francis Ramsdale		35 37	
Thomas J. Hyde		116 50	
Hyde & Gleize		129 78	
Estate of J. W. Zacharie		48 75	
E. Farrelly & Co.		26 29	
Estate of Allen & Dublois		206 75	
Estate of A. Gorry & Co.		633 00	
Caruthers, Harris & Co.		22 25	
E. B. Cogswell & Co.		112 15	
Jed'h Leeds		1 05	
P. F. Smith		1,805 74	
Isaac Emanuel		60 00	
Michael Maher		114 55	
J. C. Wilkinson		206 25	
John B. Hagan	Mobile	2,164 69	
O'Connell & Bremen	Ditto	712 37	
Stetson & Avery		130 75	
M. Downegan		200 00	

Assets—Book Account—Continued.

Names.	Residence.	Amount.	Remarks.
Whitman & Hubbard		$5,195 10	
Thomas Judd		411 00	
R. Barenger		430 43	
Herman, Briggs & Co.		82 74	
Forwarded			
Amount brought	forward		
J. C. Taylor		75 00	
F. Desangue		1,048 82	
Jos. Brant Clark	Texas	237 83	
United States		395 01	
Henry Pirlle	Louisville	36 88	
E. L. Tracy		221 98	Disputed freight bill.
— Morton		8 25	
Owen Margen		60 00	
W. J. Duffy		14 47	
Swezin Satorre		8 50	
A. Micoud & Co		52 75	
Octave Le Blanc		50 00	
E. Bertus		8 00	
— Lerond		25 87	
Commercial Bank		6 00	
Richard Isaac		17 00	
Phœnix Dupat		11 75	
Mandeville Marigny		40 00	
— Attocha		100 00	
A. Ledoux		50 25	
Madam Griffin		20 00	
— Armstrong		10 00	
M. McDougall		10 00	
Alfred Penn		7 50	
J. G. Blair		10 00	
John Garronne		20 00	
L. Le Blanc		45 00	
J. Lana		10 00	
J. M. De Balle		10 00	
William & Kellog		20 00	
Numa Augustin		10 63	
— Barclay		120 00	
Wm. Harrison		6 00	
Ketchum & Lubbock		99 75	
— Tessard		15 00	
J. Lerond		6 00	
C. B. Kenrose		50 00	
J. Lancashire		9 25	
Samuel D. Dixon		12 50	
Louis M. Booth		12 50	
Labadie		13 00	
Forwarded			
Amount [brought]	forward		
Bobet		7 00	
R. Jameson		4 46	
Hubert		14 00	
Phillips		1 05	
W. Brown		1 58	
			$410,727 18

Assets—Book Account—Continued.

Names.	Residence.	Amount.	Remarks.
Bryan & McMurdo		$18 00	
N. Bagnall		181 49	
Doct. J. B. Dudley		17 75	
P. H. Calson		60 00	
J. G. Banks		62 25	
Schooner Washington		60 00	
Schooner Orleans		17 92	
Schooner Emblem		122 81	
Schooner Cora		60 74	
Duffy		57 00	
L. M. Reynand		5 00	
James P. Bryan		25 00	
David Randall		6 25	
A. H. Clayton		12 00	
L. Betsold		60 00	
Mrs. Duplessis		2 75	
McMurdo		7 75	
F. Gainnie		45 00	
Samuel Dupas		18 00	
P. Pandelly		38 00	
H. H. Alpuente		24 00	
Doct. M. Daniel		7 00	
Harrod & Quarles		42 00	Disputed.
Albert Stein		18 75	
Blanchard		40 98	
Steamboat Otto		2 52	
Steamboat Watchman		47 00	
Schooner San Yacinto		379 36	
Schooner Thomas Toby		3,515 70	
Thomas A. Morgan		3,255 05	
Anderson & Hanna		2 10	Disputed freight bill.
William Clay		7 87	Do.
White & Co		1 57	Do.
J. B. Slocomb		3 62	Do.
Johnson & Stewart		5 56	Do.
Thomas H. Kearsey		1 05	Do.
E. C. Carter		23 96	Do.
J. Hall & Co		26 20	Do.
L. Charbonnet & Co		30 75	Do.
J. Labadie		19 16	Do.
Forwarded			
Brought	forward		
Gov. White		1 05	Do.
J. J. Browder		6 00	Do.
Henry Carleton		1 05	Do.
Dally, More & Frissel		2 10	Do.
Holmes & Co		13 60	Do.
Louis Muh		1 05	Do.
James R. Sterret		5 25	Do.
E. Clark		24 73	Do.
J. Decordone		5 25	Do.
M. E. Kennedy		1 05	Do.
Madam Poultney		1 05	Do.
Robert J. Palfrey		2 10	Do.
J. G. Washington		128 05	Do.
A. H. Cromwell		3 94	Do.

Assets—Book Account—Continued.

Names.	Residence.	Amount.	Remarks.
E. W. Curtis		$5 78	Disputed freight bill.
G. Merrick		1 05	Do.
Wilcox & Fearns		40 84	Do.
H. Millard		1 58	Do.
D. W. Dickson		13 13	Do.
Bill & Buchanan		40 14	Do.
Yorke & McAllister		11 92	Do.
Loomis & Blocker		39 96	Do.
Wallace L. & Pope		42 89	Do.
Norval & Walker		22 89	Do.
Stewart & Eastin		10 37	Do.
Niechol & Hill		29 89	Do.
A. Maybin		1 05	
Palmer, Smith & Co		18 75	
M. Biemenu		20 00	
Banderwin, Meruff Z. Co.,	Philadelphia	92 00	
Hollen & Peck		99 99	
Clappier & Micoud		25 65	
Steamboat Conway		16 25	
Captain Barclay		131 30	
Captain B. Lambert		1,084 65	
J. B. Volant		35 00	
Bienvenu Freres		5 00	
H. C. Corm		163 89	
A. Portal		79 83	
Downing and Fusillier		60 25	
A. Rash		16 12	Disputed freight bill.
Stillwell & Kemball		11 28	Do.
J. W. Breedlove		9 56	Do.
John Linton		78 28	Do.
W. J. Whitehead		6 53	Do.
Forwarded		$421,483 33	
Amount	forwarded	$421,483 33	
Rowan & Turner		5 99	Disputed freight bill.
Kirkman, Knettle & Co		39 93	Do.
J. Ott		54 60	Do.
Maxwell		4 41	Do.
F. Leblieux		3 79	Do.
Drouillard		3 46	Do.
J. Gallagher		36 95	Do.
J. Kennedy		1 05	Do.
Adams & Buckner		136 00	Do.
Puech & Bein		22 89	Do.
Isaac Dupat		9 45	Do.
F. Herrill		1 58	Do.
James Mitchell		54 28	Do.
James Wood		4 70	Do.
H. Y. Yeatman		8 06	Do.
John Dicks		29 68	Do.
John Stacker		20 34	Do.
Captain Crozet		1 57	Do.
John Labadie		8 61	Do.
Mary Carroll		1 05	Do.
Whitall, Jaudon & Co		23 21	Do.
J. Webb & Co		47 25	Do.
J. Barabino		1 05	Do.

Assets—Book Account—Continued.

Names.	Residence.	Amount.	Remarks.
Campbell & Morehouse		$4 87	Disputed freight bill.
F. Potterfield		4 85	Do.
John McCridy		65 50	
Wm. Wentworth		5 00	
Jules P. F. Smith		165 00	
David Jordon		220 20	
Johnston & Co.		2,750 28	
James A. Lee		55 26	
Jos. W. Jacobs		147 84	
Richard & Buckholst		30 25	
Joseph Richards		53 12	
George Gordon		51 25	
Bedford, Breedlove, and Robinson		45 00	
William Weaver		75 50	
James M. Reynolds		45 00	
J. B. Maussiere		210 00	
G. C. Forsyth		260 00	
Amount brought over			
A. J. White		65 00	
Mr. McCullen		100 00	
J. Reilly		50 00	
G. Morrison		50 00	
William Francis		8 63	
C. Ogier & Co.		1,221 20	
James Lambert		55 00	
Isaac Lambert		27 00	
G. C. Pryor & Co.		195 90	
J. C. & C. Keyser		44 25	
Major Mountfort		12 87	
C. F. Knowles		122 86	
Samuel M. Balg		74 44	
Battable		9 54	
J. Stackpole		320 00	
J. S. McFarlane		40 00	
W. C. Cammack & Co.		412 93	
			429,010 76
C. W. Andrews		18 00	
Gillin & Hill		35 45	
Madam Connolly		5 00	
J. P. Cooper		56 30	
J. M. Downing		41 77	
E. Hill		11 25	
J. Chaffin		31 50	
J. Lambert		114 49	
Brig Ellen & owners		20 00	
John Pooley		47 01	
P. A. Oliver		9 35	
David Burley		33 13	
P. L. Hamblet		24 00	
Thomas Quittee		10 00	
William Norris		54 00	
Thomas D. Hailes		235 25	
Fagan		25 00	
H. Davis		12 00	
M. Walsh		70 00	
S. Livermore		10 00	

Assets—Book Account—Continued.

Names.	Residence.	Amount.	Remarks.
Me. Moss		$25 00	
John R. Grymes		6 00	
Ship Corine		10 00	
Forward		$	
Amount brought	over		
F. P. Mallard		6 00	
John Parks		30 63	
J. Lartigue		45 00	
J. B. Lafont		14 00	
R. Motley		60 00	
Thomas Nelson		100 00	
E. E. Albrus		40 00	
J. J. Bass		13 50	
William Fitz		33 00	
Dupont and Lombard		6 00	
Lazar		3 50	
G. H. Hunter		3 00	
A. Abat		24 00	
Riley		50 00	
Badon		10 00	
N. Soulie		84 06	Disputed.
Foster & Hutton		16 50	Do.
William Carent		125 85	
J. F. McNeil & Co		5 50	
Capt. J. J. Johnston		50 00	
E. D. Riblieux		40 00	
L. M. Reymond		25 90	
H. Thistle		169 00	
R. A. Windsor		465 80	
Amt. forward		$	
Amount brought			
Isaac C. Williamson		65 33	
F. Duplessis		100 50	
Robert Brand		8 00	
Phillipe		8 90	
D. Griffith		70 00	
Bennett & Ashton		18 00	
William Termant		10 00	
F. Potterfield & Co		99 11	
S. Ricker, jr., about		*1,000 00	
		$432,692 34	

*S. Ricker, jr., has in his hands, for collection, notes due and protested in Mississippi, about $20,000, which were received by him as our agent for the sale of Texas land scrips, and, if paid, the proceeds to go to the credit of the Republic of Texas. The original amount was about $50,000. Some compromises have been made, and he has paid over to us about $15,000 in cash.

***Assets—Bills receivable*—Continued.**

N. Parageaux's 3 notes endorsed by A. Duhart, secured by mortgage on property in Fauxbourg Franklin, for $268 33⅓ each, due 13th March, '37; September, '37, and 13th March, '38 - - - - - -	$805 00
Jos. Clements, Mobile, note favor John H. Kaft, due 8th June, 1837, in suit for collection - - - - - - - - - -	500 00
W. G. Dewey, Texas, note favor T. Toby & Bro., payable on demand -	176 50
J. D. Baldwin, do. do. do. due 3d October, 1837 -	170 50
Richard Hay, do. do. due 4th March, 1839 -	1,450 00
S. A. Plummer, Texas, do. do. payable on demand -	100 00
White & Foley do. do. due 18th September, 1839	132 00
Barnes & Saunders, Mobile, do. do. due 14th January, 1839 -	266 66
T. O. Slark, do. C. A. Warfield, due 13th April, 1838 -	1,160 00
Do. do. do. due 13th December, 1838	1,440 00
Thomas Ferguson's note, endorsed by A. C. Downs and others, Mississippi, due 23d January, 1838, in hands of Saml. Ricker, jr., for collection, and, if paid, to go to the credit of the Republic of Texas - - $8,000	
	$6,201 10

Property.

Description.			
Ten lots of ground in the city of Houston, and one tenth part interest - In the old Capital, situated in the same place, estimated at - -	$3,500 00		
Less 11-16ths owned by William Christy -	2,406 25	$1,093 75	Papers in possession of Col. James Love, of Texas.
The one undivided part of lots in the city of Galveston, which originally cost $30,000; now worth - - -	20,000 00		
Less 11-16ths owned by William Christy -	13,750 00	6,250 00	Ditto ditto ditto.
Amount owing by Col. James Love, of Texas, to be paid as per contract out of the sale of the above described lots -	15,000 00		
Less 11-16ths owned by William Christy -	10,312 50	4,687 50	Ditto ditto ditto.
A plantation on the Brazos river, above Columbia, 3,300 acres, valued at - -	10,000 00		
12 negroes which have been sold, and payable 1st January, 1841 - - -	12,500 00		
	22,500 00		
Less ½ interest owned by A. Hodge, jr., and ½ by Thos. F. McKinney - -	15,000 00	7,500 00	Title in name of Thos. McKinney.
A selected league of land on Caney, 4,252 acres, valued at - - - -	17,000 00		
Less ⅓ interest owned by J. Hodge, jr., and ⅓ by Thos. F. McKinney - -	11,333 33	5,666 67	Ditto ditto ditto.
A selected league of land on Carancaway bayou, 4,252 acres, valued at - -	17,000 00		
Less ⅓ interest owned by A. Hodge, jr., and ⅓ by Thos. F. McKinney - -	11,333 33	5,666 67	Ditto ditto ditto.

Assets—Property—Continued.

Description.			
2½ leagues of land on the Colorado, near Bastrope, 11,078 acres, valued at -	15,000 00		
Less ¼ owned by H. Lockett, ¼ by Wm. T. T. Hepp, and ¼ by A. Hodge, jr. -	11,250 00	$3,750 00	Ditto ditto ditto.
A league of land in Power's colony, Texas, 4,428 acres, valued at - - -	5,000 00		
Less ¼ owned by H. Lockett, ¼ by W. T. Hepp, and ¼ by James House - -	3,750 00	1,250 00	Ditto ditto ditto.
A selected league of land on the Trinity river, 4,428 acres, valued at - -	10,000 00		
Less ½ interest owned by H. Kett - -	5,000 00	5,000 00	Title in the name of M. B. Menard.
One quarter of a league of land, in Lavalla colony, 1,104 acres, valued at - -	-	1,100 00	Ditto ditto Thomas F. McKinney.
640 acres of land, near Copana and Port Preston, valued at - - -	640 00		
Less ½ owned by J. B. Clark, and ½ by S. Ricker, jr. - - - - -	426 67	213 33	
		$42.177 92	
Stock and slaves.			
5 shares of stock in the Merchants' Bank, standing in name of Finley & Co. -	-	$375 00	
10 do. do. Foreman Ins'e Company -	-	25 00	
3 do. do. Orleans Navigation Co., in name of A. F. Vigers - - -	-	300 00	
40 do. do. Atchafalaya Bank - -	-	720 00	Seized at suit of Bridge, Vose & Co.
10 do. do. Orleans Cotton Press Co., in name of James Haule - - -	-	5,000 00	Said to have been sold by him to pay our debt to H. Cammack & Co.
30 do. do. do. do. H. C. Cammack -	-	15,000 00	
		$21,420 00	
Slaves, viz:			
Dick, in name of James House - -	$600 00		
Susan, do. do. - - -	1,000 00		
Ned, do. do. - - -	1,000 00		
Philip, in name of D. Frederick - -	1,000 00		
George, do. do. - - -	800 00		
Stansbury, do. do. - - -	600 00	5,000 00	
		$26,420 00	

Liabilities.

By whom held.		Amount.	Total.	Remarks.
Bank of Orleans....	Our endorsement, Samuel M. Williams draft on Sam'el Swartwout, New York, not accepted....	$1,000 00		
	Our note in favor of Hodge, Oxnard & Co., due 3d Sept'ber, 1839. It was originally for $4,768 20, granted to Mr. L. Hodge, for his accommodation, discounted in Bank of Orleans, and the curtailments and discount paid by him.....	2,500 00		
	Our endorsement, Isaac Bell's note, secured by mortgage due 2d Jan., 1838, has been sued upon by the bank, and property sold for more than sufficient to pay it.....	1,833 33		
	Our endorsement, M. Hunt and J. P. Henderson's note in favor of Samuel M. Williams, (all of Texas,) and discounted by the bank, due 17th May, 1837.....	5,555 55		
	Our endorsement, E. Rodger's draft on, and accepted by Mason, Churchell & Co., Mobile, endorsed by H. Clement and W. Hart, due 4th January, 1837.....	3,185 52		
	Our endorsement, A. Duhart's note, secured by mortgage due 28th November, 1837.....	80 00		
	Dobson & Williams' draft in favor of E. Hanricks on, and accepted by Samuel St. John, payable in New York, and endorsed by Chabert & Shriesber, at our request, $5,000.....	10,000 00		
Samuel Thompson..	T. Toby's note in favor of A. Shreisber, due 29th May, 1838, for $1,600, and T. Toby's endorsement on A. Shreisber's two notes, secured by mortgage on property in city of Lafayette, and the payment assumed by J. McHenry, Isaac Bell, & Spencer Gloyd, for $1,000 each.....	.....	$3,000 00	And costs of suit.

Liabilities—Continued.

By whom held.		Amount.	Total.	Remarks.
	Judgment in first district court against us, as security for McKinney & Williams in the suit of JesusMartinez vs. McK. & W.....	.....	4,000 00	And costs of suit.
United States.....	Judgment in the United States district court as security for steamboat Chickasaw and owners	.....	8,000 00	And costs of suit.
D. Goldsmith.....	Our acceptance of Thomas Jefferson Green's draft as agent of the Republic of Texas in favor of Capt. W. Ashley, due 11th September, 1836..	.....	3,000 00	And costs of suit.
Charles Gardiner...	Our endorsement, W. McQueen's note in favor of Charles Gardiner, due 20th November, 1838, for $1,500, and one due 3d November, 1838, for $1,466 98.....	.....	2,966 98	And costs of suit.
Plicque & Le Bean.	Our endorsement, J. Bertrand's note, due 3d November, 1838, for $645	.....	645 00	And costs of suit.
Andrew Hodge, jr..	Our endorsement, Ferguson & Hall's two notes, for $500 each.....	.....	1,000 00	
	Our draft on Samuel St. John, Mobile, in favor of Hodge, Oxnard & Co., due 12th February, 1837, (this we believe has been paid).....	.....	3,200 00	
	Our acceptance of W. Abbott's draft in favor of SamuelComby, due 21st September, 1836.....	2,529 12		
	And our acceptance of Abbott, Newland & Co. in favor of Samuel Comby, due 17th July, 1836...	2,000 00		
	These were accepted in anticipation of funds now held by them, and may be considered as cancelled.....	.....	4,529 12	
A. Hodge, jr.....	Guarantee to And. Hodge, jr., of a title of 11 league grant of land in Texas. Sold him by M. B. Menard.			
M. Drury.....	Judgment in first district court, Michael Drury vs. steamboat Watchman and owners.....	.....	369 25	And costs of suit.
	Half profit or loss in house of J. Brant, Clark & Co., Matagorda.			

Liabilities—Continued.

By whom held.		Amount.	Total.	Remarks.
Charles Gardiner...	Our endorsement, W. McQueen's note in favor of garnishees, for upwards of $3,000, which, we believe, has been cancelled.			

RECAPITULATION.

Assets.

Book accounts	$432,692 34	
Bills receivable	6,201 10	
Property	42,177 92	
Stocks	21,420 00	
Slaves	5,000 00	
		$507,491 36
Liabilities.		
Bills payable	$328,025 41	
Book accounts	68,254 98	
Individual debt of T. Toby	835 67	
		397,116 06
Surplus		$110,375 30

N. B. The *The* square of ground and house occupied by me in Livaudais, is the property of Henry Lockett, esq., by act of purchase from William McCawley before F. Grime, notary public, in November, 1838.

The household furniture was seized and sold in 1838, at the suit of Parish & Co., and the United States against T. Toby in the United States court, and was purchased by S. L. Fowler, who left the same with Mrs. Toby.

Our difficulties commenced in the spring of 1836; we were at that time under heavy acceptances for our friends in Texas; who were unable to place us in funds to meet our engagements on their accounts, in consequence of the trouble then in that country, and Messrs. McKinney & Williams for whom he had accepted the largest amount, were compelled to aid the Government to carry on the war. We had also a heavy burden on us of stock in the New Orleans Cotton Press Company, which cost us in cash $50,000, and which has been sunk alone in interest, not taking into consideration the loss we have sustained by its depreciation in value, all of which we estimate at least $100,000.

Affidavit.

I, Thomas Toby, as one of the firm of Thomas Toby & Brother, and in my behalf, do solemnly affirm that the foregoing schedule contains a correct and faithful statement of all the property possessed by Thomas Toby & Brother, and all the property I possess either in moveables or immoveables, or in other rights or claims, except, however, the clothes and linen to my use, and that of my family, my arms and militia accoutrements, and the instruments indispensably necessary for the trade or profession whereby I make a living.

And I do further solemnly affirm, that said schedule contains a correct and faithful statement of the active and passive debts of Thomas Toby & Brother, and of my own, and of the losses said Thomas Toby & Brother have sustained, as well as myself have experienced, and that I have neither directly or indirectly divested any thing of the property of said Thomas Toby & Brother, nor my own, to the injury of my creditors.

(Signed) THOMAS TOBY.

Affirmed to and subscribed this 7th October, 1840, before me,
(Signed) A. SYDNEY LEWIS,
Deputy Clerk.

Order.

The cession of the insolvent's property is accepted by the court for the benefit of their creditors, and it is ordered that a meeting of their said creditors do take place at the office of H. B. Cenas, esqr., notary public, on Saturday, the 14th of November, 1840, at 10 o'clock, A. M., in order to deliberate on the affairs of said insolvents; and in the mean time all judicial proceedings against their persons and property are stayed. C. Roselius, esq., is appointed to represent the absent creditors in this case. 8th October, 1840.

(Signed) A. M. BUCHANAN, *Judge.*

List of Creditors.

Sheriff's return on notice to creditors.

STATE OF LOUISIANA.

First judicial district court.

THOMAS TOBY and THOMAS TOBY & BROTHER
vs.
Their Creditors.

List of creditors.

Names of creditors.	Residence.	Names of creditors.	Residence.
James Hure - - -	New Orleans.	Booram & Co. - -	New York.
Andrew Hodge, jr. - -	"	Malcolm & Sanderman -	New Orleans.
S. W. Oakey & Co. -	"	Newkirk & Olden - -	"
Bridge & Rose - -	"	Parmele & Baker - -	"

List of creditors—Continued.

Names of creditors.	Residence.	Names of creditors.	Residence.
W. F. & E. D. Hyde & Co.	New Orleans.	N G. Cochran	New Orleans.
Hotchkiss & Co.	"	S. A. Belden	"
Kissam & Co.	New York.	J. Littlefield & Co.	"
Freeland & Hitchcock	"	R. H. Simmons & Co.	"
W. C. Hyde	New Orleans.	Whityng & Slark	"
Talmage & Van Pelt	New York.	James Magee & Co.	"
R. H. Pollard & Co.	New Orleans.	Bevan & Humphreys	Philadelphia
Smith, Hubbard & Co.	"	Moss & Samuel's Assign'e	"
Fellows, Cargill & Co.	New York.	Thomas Elmes & Co.	"
John Duncan & Co.	New Orleans.	Everly & Rees	"
H. Costar & Co.	New York.	L. W. Sexton	"
Baker, Johnson & Co.	"	Klein & Brother	"
H. W. Carey & Co.	"	E. Powhattan	"
J. Greenfield & Son.	"	J. F. Reiss & Co.	"
E. B. Graness & Co.	"	C. Bradley	"
Parish & Co.	"	J. W. Swan & Co.	New Orleans.
Wilcox, Anderson & Co.	New Orleans.	S. Rhodes (Rhodes)	Philadelphia.
Hall & Brown	New York.	W. B. Sweeney	Texas.
Jackson, Durell & Co.	"	Jedediah Leeds	New Orleans.
M. Maher	New Orleans.	James C. Cogley	Mobile.
John H. Graham	"	Mis. Mar. & Fire Ins. Co.	New Orleans.
Daguin, Brothers	"	B. Casey	"
Louisiana Sugar Refining Co.	"	Chabert & Schreiber	"
Lavillebeuve & Walton	"	E. Henrick	Montg'ry, Ala.
Caruthers, Harris & Co.	"	P. Freeman & Co.	New Orleans.
A. Lanfear	"	Henderson & Gaines	"
J. H. Field & Co.	"	William Christy	"
Byrne, Herman & Co.	"	J. T. Osborne	"
Lafonta & Chalon	"	Jas. H. Liverich & Co.	"
Chapman & Castillo	"	R. W. McHenry	Alabama.
R. Groning & Co.	"	Mark Richards	Philadelphia.
C. Follen	"	C. P. Relf	"
H. G. Hewes & Co.	"	Alfred Wally	New Orleans.
Stetson & Avery	"	Hyde & Goodrich	"
Rowland & Hart	"	Nicholas Hoey	"
Hodge, Oxnard & Co.	"	Roux & Hassam	"
Byrnes, Stiff & Co.	"	John Plank	Philadelphia.
Hoskins & Wilcox	"	Tarleton & Bullard	Mobile.
H. Spearing	"	Egerton & Wibrey	New Orleans.
West. Insurance Co.	"	Wm. McKean	"
Estate of Thos. C. Cash	"	J. P. Menard	Texas.
Ocean Insurance Co.	"	Schr. San Felipe & owners	Mobile.
Harrod & Hughes	"	Peters & Millard	New Orleans.
Wm. McCawley	"	Louis T. Caire	"
W. S. Boyd	Philadelphia.	F. O. Stark	"
Bank of Orleans	New Orleans.	First Dist. Court	"
Frederick Buisson	"	Clapp's Church	"
Eagle Insurance Co.	"	Shipman	Pass Christian.
Gas Light & Banking Co.	"	Pritchard & Targert	New Orleans.
H. C. Cammack & Co.	"	Steamer Neptune & owners	"
Charles Harrod	"	M. & B. Mullen	"
Dobson & Williams	Mobile.	W. T. Hepp	"

District court.

I hereby certify the foregoing list to contain the names of all the creditors of the above named insolvents, according to their schedule on file. Clerk's office, October 26th, 1840.

[SEAL.] (Signed) B. F. LEWIS, *Dep'y Clerk.*

Sheriff's return.

Received 27th of October, 1840, and served copy of notice on all the within named persons.

Returned 30th November, 1840.

(Signed) W. E. MURPHY, *D'y Sheriff.*

Proceedings before notary.—Filed 24th November, 1840.

STATE OF LOUISIANA, *city of New Orleans.*

By virtue and pursuant to an order of the honorable A. M. Buchanan, judge of the district court, in and for the first judicial district of the State of Louisiana, bearing date the eighth day of October last, and rendered upon the petition of Thomas Toby, of the parish of Jefferson, in this State, and Samuel Toby, of the city of Philadelphia, lately trading and carrying on business in this city, as merchants, under the style and firm of "Thomas Toby and Brother," praying that a meeting of the creditors of the said firm, as well as of the creditors of the said Thomas Toby, individually, may be ordered to be held at such time and place as the said court might designate, in order that they may lay before said creditors a statement of their affairs, and surrender to them their property, &c.; certified copies of which petition and order of court, as well as of the schedule of the affairs of the said petitioners, are hereunto in the margin annexed for reference.

Be it known, that on this fourteenth day of November, in the year of our Lord one thousand eight hundred and forty, before me, Hilary Breton Cenas, a notary public in and for the city and parish of New Orleans aforesaid, duly commissioned and qualified, personally came and appeared, in my notarial office, at the hour of ten, a. m., the said Thomas Toby, who declared, that for the reasons and through the causes in their said petition set forth, he and his said firm find themselves unable to meet their just engagements with their creditors:

Wherefore he, the said appearer, does, by these presents, as well in his own name as in the name of his said firm, respectfully solicit their said creditors to accept the surrender of their property, to grant them a discharge, to elect a syndic or syndics to take possession of and administer their said property according to law; and generally to do and perform any and all such other acts, matters, and things, as may be deemed requisite and necessary in or about the premises.

In faith whereof he hereunto subscribes his name, in the presence of and together with Lawrence Dornan and Ernest Granet, witnesses, of lawful age, and domiciliated in this city, and me, the said notary, the day and year above written.

Original signed—Thomas Toby, E. Grant, Law'e Dornan.

H. B. CENAS, *Not. Pub.*

And thereupon, at the same time and place, personally appeared and assembled together the creditors, and representatives of creditors, hereinafter named; who, after having had reference to the said annexed documents, as well as to the foregoing proposition of the said petitioners, and having duly deliberated upon the subject matter thereof, did severally declare as follows, to wit:

William McCawley, of this city, who being duly sworn by me, notary, did depose and say: That the said petitioners are justly and truly indebted unto him in the sum of one hundred and eighty dollars, being the amount of a promissory note drawn by the said late firm of Thomas Toby & Brother, to the order of him, this deponent:

That he accepts the surrender of the said insolvents' property; grants them the discharge prayed for; votes for Henry Lockett and the said Thomas Toby to be syndics; and dispenses with the security required by law to be given by syndics. And that they, the said syndics, have full power and authority to sell the property surrendered at such time and place, and on such terms and conditions, as they may think most conducive to the interest of the creditors generally; and also to settle, transact, and compromise, as well with the debtors as with the creditors of the said insolvents, and with any and all persons whomsoever.

In faith whereof he hereunto signs his name.

(Original signed) W. McCAWLEY.

William T. Hepp, of this city, who being duly sworn by me, notary, did depose and say, that the said insolvents are justly and truly indebted unto him in the sum of five thousand nine hundred and forty-seven dollars and eighty-two cents.

That he accepts the surrender of their property; grants them the discharge prayed for; and votes for Henry Lockett and the said Thomas Toby to be syndics and otherwise votes in the same manner, in every respect and particular, as William McCawley has herein above done, whose deposition in the premises he, this deponent, has carefully read, and of which he fully approves.

In faith whereof he hereunto subscribes his name.

(Original signed) WM. T. HEPP.

Benjamin Casey, of this city, who being duly sworn by me, notary, did depose and say, that the said insolvents are justly and truly indebted unto him in the sum of about sixty dollars, being the balance of an account; that he accepts the surrender of their property; grants them the discharge prayed for; and otherwise votes in the same manner as the said William McCawley has herein above done; whose declaration in the premises he, this deponent, has carefully read, and of which he fully approves.

In faith whereof he hereunto subscribes his name.

(Original signed) BENJ'N CASEY.

Joseph M. Kennedy, esq're, herein acting in his capacity of President pro tempore of the Bank of Orleans, a duly incorporated institution of this State, by virtue of authority in him to that effect duly vested,

who being duly sworn by me, notary, did depose and say: That the said insolvents are justly and truly indebted unto the said bank in the aggregate sum of one hundred and thirty thousand seven hundred and ninety dollars and twenty cents, together with all legal costs and interest; being the amount of certain bills and drafts held by the said bank, and more particularly set forth in the aforesaid schedule. That in his said capacity he accepts the surrender of the said insolvent's property but grants him no discharge; votes for the said Henry Lockett and Thomas Toby to be syndics, and dispenses with the security required by law to be given by syndics; and furthermore, that the said syndics have full power and authority to sell the property surrendered at such time and place, and on such terms and conditions, as they may think most conducive to the interest of the creditors generally; also, to settle, transact, and compromise, as well with the debtors as with the creditors of the said insolvents, and with any and all persons whomsoever. And this deponent finally declares, that he votes as aforesaid in the premises, without prejudice to the rights of any other person or persons, body or bodies corporate, or others, and reserves the rights against the said insolvents, or either of them, of all said persons, bodies, or others, who now have or may acquire, rights through or by reason of the notes, bills, or obligations, for or on account of which the said insolvents are indebted unto the Bank of Orleans, and in so far as his said vote in the premises may, in any manner whatsoever, affect, impair, impede, or delay the said reserved rights or remedies, then the same to be considered null and void.

In faith whereof he hereunto subscribes his name.

(Original signed) JOS. M. KENNEDY.

And now, at the hour of 6 o'clock, p. m., of the day and year above written, there not being sufficient time to receive the declarations of all the creditors, at the request of Ambrose Lanfear, William H. Avery, one of the members of the firm of Stetson & Avery, Charles Briggs, secretary of the "Ocean Insurance Company," and acting in behalf thereof, and Lewis C. Duncan, esq'r, attorney of Jesus Martinez, all creditors of the said insolvents, I, the said notary, do now adjourn these proceedings until day after to-morrow, (to-morrow being Sunday,) at the hour of ten o'clock, a. m.

In faith whereof I hereunto subscribe my name, together with the the said Lawrence Dorman and Ernest Granet, witnesses.

(Original signed) LAW'E DORMAN,
E. GRANET,
H. B. CENAS, *Not. Pub.*

And again, on this sixteenth day of November, in the year of our Lord one thousand eight hundred and forty, at the hour of ten o'clock, a. m., pursuant to the adjournment of day before yesterday, before me, the above named notary, personally came and appeared the creditors hereinafter named, who having had reference to the foregoing proceedings, as well as to the said annexed documents, did severally declare as follows, to wit:

George Dobson, one of the members of the firm of "Dobson & Williams," of the city of Mobile, in the State of Alabama, merchants, and herein acting for and in the name and behalf of his said firm, who being duly sworn by me, notary, did depose and say, that the said insolvents are justly and truly indebted unto his said firm, in the sum of forty thousand dollars and upwards, being the balance of accounts current; that in the name of his said firm he accepts the surrender of the said insolvents' property, grants them the discharge prayed for, and votes for Henry Luckett and the said Thomas Toby to be syndics, and otherwise votes in the same manner, in every respect and particular, as the said William McCawley has done herein above, whose declaration in the premises the deponent has carefully read, and of which he fully approves.

In faith whereof he hereunto subscribes his name.

(Original signed) GEO. DOBSON.

Edward Hanrick, of Montgomery, in the State of Alabama, who being duly sworn by me, notary, did depose and say, that the said insolvents are justly and truly indebted unto him in the sum of forty thousand dollars and upwards, being the balance of accounts current; that he accepts the surrender of their property, grants them the discharge prayed for, and votes for Henry Lockett and the said Thomas Toby to be syndics, and otherwise votes in the same manner as the said William McCawley has herein above done, whose declaration in the premises this deponent has carefully read, and of which he fully approves.

In faith whereof he hereunto subscribes his name.

(Original signed) EDWARD HANRICK.

And now personally appeared C. Roselius, esq're, attorney and counsellor at law, duly appointed by the aforesaid order of court to represent the absent creditors of the said insolvents in the premises, who, after having taken cognizance of the foregoing proceedings, declared, that reserving all the rights and privileges of the said absent creditors as fully, in every respect, as he might or could do, if particularly acquainted therewith, he has no objections to make to the said proceedings, and hereunto signs his name.

(Original signed) C. ROSELIUS.

And now, at the hour of six o'clock, p. m., of the day and year last above written, no other creditors, nor representatives of creditors appearing, I, the said notary, do now close these proceedings.

In faith whereof I hereunto subscribe my name, together with the said Lawrence Dornan and Ernest Granet, witnesses.

(Original signed) LAW'E DORNAN,
E. GRANT,
H. B. CENAS, *Not. Pub.*

I certify the foregoing to be a true copy of the original proceedings extant in my current notarial register.

I further certify, that Messrs. Henry Lockett and Thomas Toby have

been duly elected syndics of the creditors in the said proceedings named and referred to, and as such having been duly dispensed from furnishing the security required by law to be given by syndics.

In faith whereof I grant these presents, under my signature and the impress of my seal of office, at New Orleans, this 21st day of November, 1840.

[SEAL.]

(Signed) H. B. CENAS, *Not. Pub.*

Judgment homologating proceedings, rendered 27th November, 1840.

THOMAS TOBY
vs.
HIS CREDITORS and the creditors of Thomas Toby & Brother. } No. 19,579.

On motion of Lockett and Micon, esq'res, of counsel for the insolvent; and on showing to the court that no opposition had been made to the proceedings of the creditors at their meeting before the notary, it is ordered that said proceedings be homologated, and Thomas Toby and Henry Lockett be, and they are hereby, confirmed as syndics, conformably to said proceedings.

Judgment signed 2d December, 1840.

(Signed) A. M. BUCHANAN, *Judge*.
(Countersigned) P. LE BLANC, *D'y Cl'k*.

Petition for order of sale, filed 16th January, 1841.

To the honorable the district court, for the first judicial district:

The petition of Thomas Toby and Henry Lockett, syndics of the creditors of Thos. Toby and Thos. Toby & Brother, respectfully shews: That by the vote of the creditors they are authorized to sell the property surrendered on the terms and conditions that they may think most conducive to the interest of the creditors.

Wherefore said syndics say that they believe the Stansbury [property] should be sold for half cash and half credit of 12 months, with mortgage reserved, and for an endorsed note; and pray an order of the court authorizing them to sell said slave accordingly.

(Signed) WM. C. MICON,
Att'y for syndics.

Order.

The syndics are authorized to sell the property as prayed for, and according to law, 16th January, 1841.

(Signed) A. M. BUCHANAN, *Judge*.

Petition for order of sale, filed 18th June, 1841.

The petition of Thomas Toby and Henry Lockett, syndics of the cereditors of Thomas Toby & Brother, respectfully shews: That by the vote of the creditors your petitioners were authorized to sell the property surrendered, at such time and on such terms and conditions, as they think conducive to the interest of creditors.

Wherefore said petitioners pray that they be authorized to sell the following slaves, surrendered by said insolvents, to wit: Philippe, Dick, Ned, George, and Suzame, after legal advertisements, by public auction, at Bank's Arcade, on a credit to expire on the 1st May, 1842, for approved endorsed notes, bearing special mortgage upon the property sold until payment.

(Signed) WM. C. MICON,
Att'y for syndics.

Order.

The syndics are hereby authorized to sell the within named slaves as prayed for, and according to law, 18th June, 1841.

(Signed) A. M. BUCHANAN, *Judge.*

Order.—(Rule on syndics.)

4th February, 1846.

THOMAS TOBY and Thomas Toby & Brother vs. THEIR CREDITORS. } No. 19,579.

On motion of H. Griffin, esq're, of counsel for Michael Maher, a creditor of the said insolvents, it is ordered by the court, that Thomas Toby and H. Lockett, syndics of the insolvents, show cause within ten days from the service hereof, why they should not file a tableau of distribution of the funds in their hands, and a full account of their administration, and also produce their bank book, properly balanced.

Sheriff's return.

Received 4th February, 1846, and on the 4th of the same month served copy of the within rule on H. Lockett, esq're, in person, and on the same day served copy of same of T. Toby, in person.

Returned February 5th, 1846.

(Signed) A. S. LEWIS, *Sh'ff.*

Order.—(Rule on syndics.)

12th September, 1836.

THOMAS TOBY and Thomas Toby & Brother vs. THEIR CREDITORS. } No. 19,579.

On motion of John L. Lewis, late clerk of the first judicial district court, creditor of the insolvents for costs of court, it is ordered, that Thomas Toby and Henry Lockett, syndics of the creditors of said insolvents, do show cause on Monday, the 5th day of October next, at 10 o'clock, a. m., why they should not file a tableau of distribution herein, and at the same time and place that they exhibit their bank book as syndics.

Sheriff's return.

Received September 14th, 1846, and on the 24th served copy of the within order on Thomas Toby, and on the 25th served copy of the same on Henry Lockett, esq're, both in person.

Returned September 26th, 1846.

(Signed) JNO. L. LEWIS, *Sh'ff.*

Order.—(Rule on syndics.)

22d June, 1847.

THOMAS TOBY & BROTHER
vs.
THEIR CREDITORS. } No. 19,579.

On motion of H. D. Ogden, esq're, of counsel for Charles Gardiner, a creditor of the insolvents, it is ordered that Thomas Toby and Henry Locketts, syndics of the insolvents, shew cause, within ten days from the service hereof, why they should not file a tableau of distribution of the funds in their hands, and a full account of their administration, and also produce their bank book, properly balanced.

Sheriff's return.

Received 22d June, 1847, and on the 23d of the same month served copies of the within order on H. Lockett, esq're, and on Thomas Toby, both personally. Returned 25th June, 1847.

(Signed) JNO. L. LEWIS, *Sh'ff.*

Order.—(Rule on syndics.)

21st January, 1848.

THOMAS TOBY & BROTHER
vs.
THEIR CREDITORS. } No. 19,579.

On motion of H. D. Ogden, esq're, of counsel for Charles Gardiner, a creditor of the insolvents, it is ordered that Thomas Toby and Henry Lockett, syndics of said insolvents, shew cause, within ten days from the service hereof, why they should not file a tableau of distribution of the funds in their hands and a full account of their administration, and also produce their bank book, properly balanced.

Sheriff's return.

Received 22d January, 1848, and on the same day served copy of the within order on Thomas Toby, by leaving same at his counting-house, on Camp street, between Gravier and Camp streets, in the hands of his son, a free person, above 14 years of age; and on the 21st of the same month served copy of same, personally, on H. Lockett, esq're.

Returned 25th January, 1848.

(Signed) JOHN L. LEWIS, *Sh'ff.*

Order.—(Rule against syndics made absolute.)

4th February, 1848.

THOMAS TOBY & BROTHER
vs.
THEIR CREDITORS. } No. 19,579.

On motion of H. D. Ogden, esq're, of counsel for Charles Gardiner, a creditor of the insolvents, and on showing to the court that more than ten days have elapsed since the service of the rule taken herein on the 21st ult., on the syndics, and no cause shewn to the contrary, it is ordered that said rule be made absolute, and that Thomas Toby and Henry Lockett, syndics of said insolvents, do, within one week from this date, file a tableau of distribution of the funds in their hands, and a full account of their administration, and also produce their bank book, properly balanced.

Tableau of Distribution, filed May 27th, 1848.

T. Toby & H. Lockett, syndics—surrender of T. Toby & Toby & Brother.

DR.

Proceeds of sale of slaves - - - - -		$2,750 00
CR.—*Privileged claims.*		
Paid H. B. Cenas, N. P., for notarial services at the meeting of creditors, &c. - - -	$250 00	
Paid C. Roselius, esq're, att'y for absent creditors	250 00	
" H. Lockett professional services to insolvents filing and conducting proceedings to a surrender - - - - -	250 00	
" services rendered the estate in prosecuting claims since the surrender - -	500 00	
" sheriff's fees - - - -	175 00	
" clerk's fees - - - -	92 50	
" commission to syndics, 5 pr. ct., $2,750 -	137 50	1,655 00
Balance -		$1,095 00

The balance to be distributed among the mortgage creditors, commencing with the Louisiana Sugar Refinery Co. - $1,014 60 and the others, all set forth in the certificate of mortgages made part of this tableau, with the exception of the mortgage of Gardiner & Watson, which has been paid, viz., $1,395 64.

There will be no dividend for the ordinary creditors. New Orleans, Mar. 11th, 1848.

(Signed) THOMAS TOBY,
" H. LOCKETT.

This tableau has been in my possession some fifteen days, for the

sake of examination as regards the plea of payment of the claim of Gardiner & Watson. N. Orleans, May 27th, 1848.

(Signed) H. D. OGDEN,
Att'y for Gardiner.

Mortgage certificate annexed.

Mortgage office.—The undersigned, recorder of mortgages for the parish and city of New Orleans, State of Louisiana, certifies, that in the records in his office there are no other judgments recorded in the names of Thomas Toby and Samuel Toby, than the following, to wit:

B. M. 3, F. 8. 1st. One in favor of the Louisiana Sugar Refinery C'y vs. Thomas Toby & Brother, resulting from a judgment rendered by the parish court, signed 2d, and recorded 15th December, 1836, for the sum of $1,014 60 c., interest and costs.

B. M. 3, F. 9. 2d. One in favor of Wilcox, Anderson & Co. vs. Thomas Toby & Brother, resulting from a judgment rendered by the city court of New Orleans, signed 13th, and recorded 15th December, 1836, for the sum of $1,000, interest and costs.

B. M. 3, F. 10. 3d. One in favor of S. W. Oakey vs. Thomas Toby and Samuel Toby, in solido, resulting from a judgment rendered by the parish court, signed 17th, and recorded 19th December, 1836, for the sum of $11,790 22 cts., interest and costs.

B. M. 3, F. 12. 4th. One in favor of A. B. Henshaw vs. T. Toby and Brother, resulting from a judgment rendered by the court of New Orleans, signed and recorded 5th January, 1837, for the sum of $250, interest and costs.

B. M. 3, F. 12. 5th. One in favor of S. W. Oakey vs. Thomas Toby and Samuel Toby, in solido, resulting from a judgment rendered by the parish court, signed 2d, and recorded 6th January, 1837, for the sum of $10,038 99 c., interest and costs.

B. M. 3, F. 12. 6th. One in favor of Alling, Hyde & Co. vs Thomas Toby & Brother, in solido, resulting from a judgment rendered by the city court of New Orleans, dated 21st December, 1836, and recorded 6th January, 1837, for the sum of $851 95 c., interest and costs.

B. M. 3, F. 14. 7th. One in favor of Silas W. Sixton vs. Thomas Toby & Brother, resulting from a judgment rendered by the first judicial district court, signed and recorded 14th January, 1837, for the sum of $1,856 69 c., interest and costs.

B. M. 3, F. 14. 8th. One in favor of Michael Maher, Thos. Toby & Brother, resulting from a judgment rendered by the said first judicial district court, signed and recorded 14th January, 1837, for the sum of $1,971 42 c., interest and costs.

B. M. 3, F. 15. 9th. One in favor of Bridge, Vose & Co. vs. Thomas Toby & Brother, resulting from a judgment rendered by the said first judicial district court, signed 20th, and recorded 21st January, 1837, for $1,740 02 c., interest and costs.

B. M. 3, F. 15. 10th. One in favor of Bridge, Vose & Co., Thomas Toby & Brother, resulting from a judgment rendered by the said

first judicial district court, signed 20th, and recorded 20th January, 1837, for the sum of $994 82 c., interest and costs.

B. M. 3, F. 15. 11th. One in favor of Stetson, Avery & Co., Thomas Toby and Brother, resulting from a judgment rendered by the first judicial district court, signed and recorded 24th January, 1837, for the sum of $4,403, interest and costs.

B. M. 3, F. 36. 12th. One in favor of William Rankin & Co. vs. Thomas Toby and Samuel Toby, jointly and severally, resulting from a judgment rendered by the United States district court, eastern district of Louisiana, signed the 10th March, and recorded 18th April, 1837, for the sum of $512 7c., interest and costs.

B. M. 3, F. 39. 13th. One in favor of William G. Hewes & Co. vs. Thos. Toby and Brother, resulting from a judgment rendered by the first judicial district court, signed 13th, and recorded 21st April, 1837, for the sum of $1,773 33c., interest and costs.

B. M. 3, F. 40. 14th. One in favor of Bridge, Vose & Co. vs. Thomas Toby and Brother, resulting from a judgment rendered by the first judicial district court, signed 14th, and recorded 28th April, 1837, for the sum of $3,200, with damages, interest, and costs.

B. M. 3, F. 51. 15th. One in favor of Byrus, Stiff & Co. vs. Toby & Brother, resulting from a judgment rendered by the parish court, signed 22d, and recorded 26th May, 1837, for the sum of $5,085, interest and costs.

B. M. 3, F. 56. 16th. One in favor of M. B. & W. Edgar vs. Thomas Toby and Brother, resulting from a judgment rendered by the first judicial district court, signed and recorded 3d June, 1837, for the sum of $622 68c., interest and costs.

B. M. 3, F. 62. 17th. One in favor of W. F. & E. D. Hyde & Co. vs. Thomas Toby & Brothers, resulting from a judgment rendered by the first judicial district court, signed 11th May, and recorded 17th June, 1837, for the sum of $1,259 61c., interest and costs.

B. M. 3, F. 106. 18th. One in favor of Gardiner & Watson vs. Thomas Toby and Samuel Toby, in solido, resulting from a judgment rendered by the parish court, signed 16th May, and recorded 14th November, 1837, for $1,395 64c., interest and costs.

B. M. 3, F. 107. 19th. One in favor of Hawes & Haden vs. Thomas Toby and Brother, resulting from a judgment rendered by the city court of New Orleans, signed 10th February, and recorded 18th November, 1837, for $853 95c., interest and costs.

B. M. 3, F. 155. 20th. One in favor of M. L. Dawson vs. Thos. Toby and Samuel Toby, in solido, resulting from a judgment rendered by the United States district court, 9th judicial district, signed 7th December, 1837, and recorded 4th January, 1838, for the sum of $3,856 91c., interest and costs.

B. M. 3, F. 199. 21st. One in favor D. A. Given vs. Thomas Toby and Samuel Toby, jointly and severally, resulting from a judgment rendered by the first judicial district court, signed 17th January, and recorded 28th February, 1838, for the sum of $2,765 59c., interests and costs.

B. M. 3, F. 201. 22d. One in favor of Moss & Samuel, assignees of Joseph L. Moss and J. Philips, vs. Thomas Toby & Brother, jointly and severally, resulting from a judgment rendered by the first judicial district court, signed 21st February, and recorded 1st March, 1838, for the sum of $1,972 56, interest and costs.

B. M. 3, F. 245. 23d. One in favor of Anthony Rash, syndic of the creditors of Egerton & Wibray, vs. Thomas Toby & Brother, resulting from a judgment rendered by the city court of New Orleans, signed 4th, and recorded 28th April, 1838, for the sum of $292 58c., interest and costs.

B. M. 3, F. 247. 24th. One in favor of Rowland & Heart vs. Thos. Toby and Brother, in solido, resulting from a judgment rendered by the first judicial district court, signed 30th April, and recorded 1st May, 1838, for the sum of $958 83c., interest and costs.

B. M. 3, F. 269. 25th. One in favor of Asa D. Gove vs. Samuel Toby, resulting from a judgment rendered by the city court of New Orleans, signed 18th, and recorded 26th May, 1838, for the sum of $408 58c., interest and costs.

B. M. 3, F. 288. 26th. One in favor of Ambrose Lanfear vs. Thomas Toby & Brother, in solido, resulting from a judgment rendered by the first judicial district court, signed 8th, and recorded 18th June, 1838, for the sum of $4,269 07c., interest and costs.

B. M. 3, F. 291. 27th. One in favor of Parish & Co. vs. Samuel Toby and Thomas Toby, in solido, resulting from a judgment rendered by the United States district court, 9th circuit, eastern district of Louisiana, signed 28th December, 1837, and recorded 23d June, 1838, for the sum of $3,565, interest and costs.

B. M. 3, F. 291. 28th. One in favor of Parish & Co. vs. Thomas Toby and Brother, in solido, resulting from a judgment rendered by the first judicial district court, signed 15th February, and recorded 23d June, 1838, for the sum of $9,995 26c., interest and costs.

B. M. 3, F. 430. 29th. One in favor of Plicque & Le Bean vs. J. Bertrand and Thomas Toby, jointly and severally, and in solido, resulting from a judgment rendered by the first judicial district court, signed 24th, and recorded 28th May, 1839, for the sum of $648 50c., interest and costs.

B. M. 3, F. 523. 30th. One in favor of Hall & Boune vs. Thomas Toby and Samuel Toby, in solido, and also under their partnership name of Thomas Toby and Brother, resulting from a judgment rendered by the commercial court of N. Orleans, signed 3d July, and recorded 3d December, 1839, for the sum of $1,152 43c., interest and costs.

B. M. 3, F. 523. 31st. One in favor of Hall & Boone vs. the same, resulting from a judgment rendered by said commercial, court, signed 3d July, and recorded 3d December, 1839, for the sum of $2,150 52c., interest and costs.

B. M. 3, F. 534. 32d. One in favor of the Bank of Orleans vs. Thomas Toby and Samuel Toby, in solido, resulting from a judgment rendered by said commercial court, signed 9th, and recorded 10th December, 1839, for the sum of $11,500, interest and costs.

B. M. 3, F. 535, 33d. One in favor of the Bank of Orleans vs. the said Thomas Toby and Samuel Toby, in solido, resulting from a judgment rendered by said commercial court, signed 9th, and recorded 10th December, 1839, for the sum of $9,000, interest and costs.

B. M. 4, F. 45. 34th. One in favor of Samuel Thompson vs. Thos. Toby and Adolphe Shreiber, in solido, resulting from a judgment rendered by the first judicial district court, signed 12th February, 1839, and recorded 27th January, 1840, for the sum of $3,018, interest and costs.

B. M. 4, F. 102. 35th. One in favor of the Bank of Orleans vs. Thos. Toby, Samuel Toby, and others, in solido, resulting from a judgment rendered by the commercial court of New Orleans, signed 11th, and recorded 12th March, 1840, for $4,400, interest and costs.

B. M. 4, F. 102. 36th. One in favor of the Bank of Orleans vs. Thos. Toby, Samuel Toby, and others, in solido, resulting from a judgment rendered by said commercial court, signed 11th, and recorded 12th March, 1840, for the sum of $1,700, interest and costs.

B. M. 5, F. 68. 37th. One in favor of the commissioners of the Bank of Orleans vs. Thos. Toby and Andrew Hodge, junior, in solido, resulting from a judgment rendered by the said commercial court, signed 8th, and recorded 10th December, 1842, for the sum of $3,800, interest and costs.

B. M. 5, F. 87. 38th. And one in favor of the commissioners of the Bank of Orleans vs. Samuel Toby, resulting from a judgment rendered by the said commercial court, signed 23d, and recorded 26th December, 1842, for the sum of three thousand eight hundred dollars, $3,800, interest and costs.

New Orleans, February 20th, 1846.

(Signed) EDMUND V. WELTS, [SEAL.]
D'y recorder.

Order, (rule on syndics,) 9th June, 1848.

THOMAS TOBY, and Thomas Toby and Brother
vs.
THEIR CREDITORS.
} No. 19,519.

On motion of H. G. Ogden, esq., of counsel for the Louisiana Sugar Refinery Company, and on suggesting to the court, that on or about the 27th of May, 1848, the syndic of said Thomas Toby and Brother filed in court a tableau of distribution, wherein the said Louisiana Sugar Refinery Company is placed as a mortgaged creditor; and on further suggesting to the court, that said tableau is not accompanied by any petition or prayer to have the same advertised or homologated, it is ordered that Thomas Toby and Henry Lockett, syndics of said insolvents, shew cause on Wednesday next, the 4th instant, at 10 o'clock, a. m., why the said tableau should not be advertised, and after the legal delays and formalities required by law, duly homologated and the funds distributed in accordance.

Sheriff's return.

Received 10th June, 1848, and on the same day served copies of the within order on Thomas Toby and Henry Lockett, by leaving the same at the office of the latter, at the corner of Camp and Common streets, in the hands of Mr. Goold, partner of said Henry Lockett; said Thomas Toby being absent from the city.

Returned 13th June, 1848.

(Signed) JNO. L. LEWIS, *Sheriff*.

Petition to homologate tableau, filed 10th June, 1848.

To the honorable the fifth district court, the petition of T. Toby and H. Lockett, syndics herein, humbly shews, they herewith present a tableau of distribution of the affairs of the insolvents, which they pray be duly advertised and homologated, and the funds distributed in accordance therewith.

(Signed) H. LOCKETT,
Att'y for syndics.

Represented by G. S. GOOLD.

Order.

Let the creditors, and all other persons therein interested, be notified according to law to show cause, if any they have, and within the legal delay, why the tableau of distribution should not be confirmed and homologated, and the funds distributed in accordance therewith, 10th June, 1848.

(Signed) A. M. BUCHANAN, *Judge*.

Opposition of W. Oakey, filed 26th June, 1848.

T. TOBY
vs.
HIS CREDITORS, and the creditors of T. Toby and Bro.

5th district court.

The opposi[ti]on of Samuel W. Oakey, who resides in the city of New Orleans, respectfully shews: That he is a creditor of the insolvent, being the owner of a judgment for one thousand thirty-eight $\frac{99}{100}$ dollars; of another for the sum of eleven thousand seven hundred and ninety $\frac{33}{100}$ dollars; and of another for the sum of one thousand three hundred and fifteen $\frac{12}{100}$ dollars, all rendered against T. Toby and Bro., at the suit of S. W. Oakey, in the late parish court, for the city and parish of New Orleans, and as transferree of the judgment against T. Toby and Bro., for one thousand and fourteen $\frac{60}{100}$ dollars, with interest and costs, rendered in the late parish court, of the parish and city of New Orleans, at the suit of the Louisiana Sugar Refinery Company, on the 25th November, 1836; the said suit being No. 8,963 of the docket of said court; opponent reserving all rights of action against the syndics, and each of them, for their manifest negligence and many gross derelictions

of duty in the settlement of the affairs of the insolvent, oppose the tableau now filed, on the grounds:

1st. That it contains no date to the sale of the slaves mentioned therein, nor does it refer to any process verbal of the sale by which the dates can be ascertained, and to no proceedings showing that the sale was made in accordance to law or the orders of this court.

2d. That it does not account for the revenues or hire of said slaves from the date of the surrender to the day of sale, whenever that may have been.

3d. That the said tableau does not account for the proceeds of the sale of the real estate of the value of forty-two thousand dollars, surrendered by the insolvent, nor for the revenues arising from the same, if the said real estate be not sold.

4th. That the sum allowed to H. B. Cenas, notary, in said tableau is exorbitant; that the sum of two hundred and fifty dollars allowed to H. Lockett, for filing and conducting proceedings, has not been earned; that the further sum of five hundred dollars, allowed to said Lockett for prosecuting claims since the surrender, ought not to be allowed, inasmuch as said Lockett, as one of the syndics, is only entitled to the per centage allowed by law for his services, and for the further reason that said Lockett has rendered no services, but on the contrary has totally neglected to discharge his duty; that the sum of one hundred and thirty-seven dollars per centage allowed to the syndics cannot be claimed by them, for the reason that so far from having in any respect rendered services to the benefit of the creditors of the insolvent, they have, by their fault and negligence, caused said creditors great damage and loss.

Opponent therefore prays that the said tableau may be so amended as to award to your opponent the proceeds of the sale of said slaves mentioned in the tableau, after paying the strictly legal and necessary costs, and that said syndics be directed immediately to file a full and detailed account of their administration, and that they be personally condemned to pay the costs of this opposition.

And, as in duty bound, &c.

(Signed) JOHN C. LARUE,
For opponent.

Order, (opposition fixed for trial,) 27th June, 1848.

THOMAS TOBY
vs.
HIS CREDITORS, and the creditors of T. Toby and Brother. } No. 19,579.

On motion of J. C. Larue, esquire, of counsel for S. W. Oakey, opponent herein, it is ordered, that the opposition herein filed by said Oakey to the tableau of distribution, be fixed for trial for Saturday next, the 1st July, at 10 o'clock, a. m.

Sheriff's return.

Received 29th June, 1848, and on the 29th of the same month,

served copy of the within order personally on H. Lockett, and on the 30th of the same month, served copy of same personally on H. B. Cenas; T. Toby could not be found, he being absent from the parish.

Returned 30th June, 1848.

(Signed) JOHN L. LEWIS, *Sheriff*.

Proof of publication filed 28th June, 1848.

THOMAS TOBY & T. TOBY & BROTHER
vs.
THEIR CREDITORS.

Fifth district court.

John S. Baron being sworn says, that the notice to the creditors, and all other persons interested, to show cause, if any they have, why the tableau filed in the above insolvency should not be homologated and approved, the funds distributed, has been published, in English and in French, in the Louisiana Courier, on the 17th, 22d, and 24th June, 1848.

(Signed) JNO. S. BARON.

Sworn to and subscribed before me, in open court, this 28th June, 1848.

(Signed) G. W. LEWIS, *D'y clerk*.

Judgment homologating tableau, received 28th June, 1848.

THOMAS TOBY & Thomas & Brother
vs.
THEIR CREDITORS.
No. 19,579.

On motion of H. D. Ogden, esq're, of counsel for the Louisiana Sugar Refinery Company, a creditor of the insolvents, and on producing to the court due proof of the publication of the filing of the tableau of distribution herein, and more than 10 days having elapsed since the first publication of said notice, it is adjudged and decreed that said tableau be, and the same is hereby, confirmed and homologated according to law, in so far as the same has not been opposed.

Judgment signed 3d July, 1848.

(Signed) A. M. BUCHANAN, *Judge*.

Order—(Opposition fixed for trial.)

AUGUST 4th, 1848.

THOMAS TOBY & Thomas Toby & Brother
vs.
THEIR CREDITORS.
No. 19,579.

On motion of J. H. Van Dalson, esq're, of counsel for Samuel W. Orkey, it is ordered, that the opposition herein filed to the tableau of distribution be fixed for Friday next, the 11th instant, at 10 o'clock, a. m., and that due notice thereof be given.

Sheriff's return.

Received 5th August, 1848, and on the 7th of same month served copy of the within order on H. B. Cenas, T. Toby, and H. D. Ogden, in person; and on the 8th same month, H. Lockett, esq're, being absent from the State, I left this order at his office, in Camp street, next to corner of Common street, with Mr. E. L. Goold, his partner, who refused service of the same. Said service was made by direction of J. Van Dalson for S. W. Oakey, opponent.

Returned 8th August, 1848.

(Signed) S. LOVETT WALDO,
Deputy sheriff.

Order—(Opposition continued.)

AUGUST 11th, 1848.

THOMAS TOBY & BROTHER
vs.
THEIR CREDITORS. } No. 19,579.

The oppositions herein filed to the tableau came on this day for hearing before the court, when, by understanding between the parties, the same are continued till Friday next, the 18th instant, at 10 o'clock, a. m.

Order—(Rule on syndics.)

SEPTEMBER 1st, 1848.

THOMAS TOBY & BROTHER
vs.
THEIR CREDITORS. } No. 19,579.

On motion of Jas. H. Van Dalson, esq're, of counsel for Samuel W. Oakey, opposing the tableau offered for homologation herein filed, and in view of said opposition, it is ordered by the court that Thomas Toby and Henry Lockett, syndics of said insolvents, shew cause, on Friday next, the 8th instant, at 10 o'clock, a. m., why the active property surrendered by said insolvents (not already disposed of) should not be sold for cash after the legal advertisements; all of which said property is particularly described in the schedule filed by insolvent; which said schedule is now referred to for certainty, and why said syndics should not immediately render an account of said sale on its consummation.

Sheriff's return.

Returned 2d September, 1848. Thomas Toby and Henry Lockett are both absent from this parish; I therefore return this not served.

Returned 5th September, 1848.

(Signed) A. S. LEWIS, *D'y sheriff.*

Judgment on rule and consent filed and rendered 8th September, 1848.

THOMAS TOBY & Thomas Toby & Brother
vs.
THEIR CREDITORS. } No. 19,579.

Honorable 5th district court of New Orleans:

The rule taken herein on the syndics to shew cause why the entire assets of this surrender should not be sold, after the legal advertisements, for cash, and the syndics appearing and raising no objections to the matter contained in said rule, it is ordered, adjudged, and decreed, that all the moveables contained in said assets surrendered be sold, after an advertisement of ten days, for cash, and that all the real estate contained in the assets of said surrender, or rights, titles, and interest, to any real estate in the same, shall be sold for cash, after an advertisement of thirty days.

And it is further decreed, that said syndics do file a full account of their entire administration immediately after said sales shall have been effected.

Judgment rendered 8th September, 1848.

Signed 16th September, 1848.

(Signed) A. M. BUCHANAN, *Judge.*

We, the undersigned, do hereby consent that the above judgment be rendered herein without affecting the opposition already taken herein to the tableau of distribution now on file.

(Signed) H. LOCKETT,
For self and Toby.
JAS. H. VAN DALSON,
Counsel for S. W. Oakey.

Sheriff's return on copy of above judgment.

Received 18th September, 1848; and, in obedience to the within order, I advertised for sale the property mentioned herein, and fully described in the schedule filed in court in this case, and on the days fixed upon for the sales, to wit: for the moveables, on the second day of October, eighteen hundred and forty-eight, all the formalities required by law having been duly complied with, and said moveables having been duly appraised, I did, at the hour of twelve o'clock, m., repair to the rotunda of the City Exchange, St. Louis street, between Chartres and Royal streets, and then and there, after having first announced in a loud and audible voice the terms and conditions hereinafter expressed and specified, I did offer for sale, at public auction, for cash, the said moveables, when the same were not sold, for want of bidders, at two-thirds of their appraised value, but were again advertised for sale at twelve months credit, according to law, announcing the sale to take place in the rotunda of the City Exchange, St. Louis street, between Chartres and Royal streets, on the twenty-first of October, eighteen hundred and forty eight, at twelve o'clock, m. And on the said day and hour, and at the place above mentioned, I did offer for sale, at public auction, for account of the creditors of the insolvents, the said moveables, when Samuel Wright Oakey, being the highest and last bidder, the said moveables were adjudicated to the said Samuel Wright Oakey for the price and sum of one hundred and twenty dollars, $120, payable at twelve months credit, in a bond, with good and solvent se-

curity, as the law directs. And on the day fixed upon for the sale of the immoveables, to wit, on the twenty-first of October, eighteen hundred and forty-eight, all the formalities required by law having been duly complied with, and said immoveable property having been duly appraised, I did, at the hour of twelve o'clock, m., repair to the rotunda of the City Exchange, St. Louis street, between Chartres and Royal streets, and then and there, after having first announced in a loud and audible voice the terms and conditions hereinafter expressed and specified, I did offer for sale, at public auction, for cash, under the direction of H. Lockett and Thomas Toby, syndics, the said immoveables, when the same were not sold, for want of bidders, at two-thirds of their appraised value, but were again advertised for sale at 12 months credit, according to law, announcing said sale to take place in the rotunda of the City Exchange, St. Louis street, between Chartres and Royal streets, on the ninth day of November, eighteen hundred and forty-eight, at twelve o'clock, m.; and on the said day and hour, and at the place above mentioned, I offered for sale, at public vendue, under the directions of said syndics, and for account of the creditors of said insolvents, the said immoveables, when Samuel Wright Oakey, being the highest and last bidder, the said immoveables were adjudicated to the said Samuel Wright Oakey for the price and sum of nineteen hundred and ninety five dollars, $1,995, payable at 12 months credit, in a bond, with good and solvent security, as the law directs; which said two several bonds were dispensed with by said syndics, and which amounts of purchases are to be credited to said purchaser, in his superior privileges held by him in first mortgages, in the final account to be filed by said syndics in this case.

Received charges on two sales, $115 20.

Returned November 15th, 1848.

(Signed) JNO. L. LEWIS, *Sheriff*.

Advertisements annexed to return.

Fifth district court of New Orleans.

THOMAS TOBY, and Thomas Toby and Brother, vs. THEIR CREDITORS. } No. 19,579.

Docket of the late district court of the 1st judicial district.

By virtue of, and in obedience to, an order of sale rendered 8th September, and signed the 16th September, 1848, to me directed by the honorable the 5th district court of New Orleans, in the above entitled matter, I will proceed to sell at public auction, in the rotunda of the City Exchange, St. Louis street, between Chartres and Royal streets, on Saturday, October 21st, 1848, at 12 o'clock, m., for account of the creditors of said insolvents, all the rights and credits, claims for lands and tenements, of whatsoever nature, with all the accrued privileges thereon, but without any guarantee of the existence of titles or such claims. The whole as per schedule, which will be exhibited at the time

of sale, surrendered by said insolvents to their creditors. Terms, cash at the stand.

JOHN L. LEWIS,
S. 20.30. O. 10.20. *Sheriff of the parish of Orleans.*

Cinquieme court de la Nouvelle Orleans.

THOMAS TOBY, and Thomas Toby and Brother,
vs.
LEURS CREANCIERS.
} No. 19,579.

Des dos de l'année, cr. de d't du 1er d't jud.

En vertu d'un ordre de vente, rendu le 8, et signé le 16 Septembre, 1848, a moi adressé par l'hon. cinquieme cour de district de la Nouvelle Orleans, dans l'affaire ci-dessus, je procederai le Samedi, 21 Octobre, 1848, à midi, dans la rotonde de la Bourse de Cite, rue St. Louis, entre celles des Chartres et royale, pour le compt des creanciers des insolvables a l'adjudication de tous les droits, titres, et reclamations des dits failles aux terres et proprietes de quelque nature qu'elles soient avec tous les privileges qui sont dessus, mais sans garantee aucune de tels titres droits ou réclamations abandonnes par les insolvables à leurs créanciers. Le tout ainsi qu'il appert du belan qui sera exhibé au public à la vent.

Conditions, comptant.

JOHN L. LEWIS,
Sheriff de la paroisse d' Orleans.

THOMAS TOBY, and Thomas Toby and Brother,
vs.
THEIR CREDITORS.
} No. 19,579.

New Orleans, (docket of the late d't c't of the 1st judicial district.)

By virtue of, and in obedience to, an order of sale, rendered 8th September, and signed 16th September, 1848, to me directed, by the honorable the fifth district court of New Orleans, in the above entitled matter, I will proceed to sell at public auction, in the rotunda of the City Exchange, St. Louis street, between Chartres and Royal streets, on Thursday, November 9, 1848, at 12 o'clock, m., for account of the creditors of said insolvents, all the rights and credits, claims for lands and tenements, of whatsoever nature, with all the accrued privileges thereon, but without any guarantee of the existence of titles or such claims. The whole as per schedule, which will be exhibited at the time of sale, surrendered by said insolvents to their creditors. Terms, this being the second and last auction, the said rights, titles, credits and claims, will be definitely adjudicated to the highest and last bidder, for what they will bring at 12 months credit; purchaser furnishing bond with good and solvent security as the law directs.

O. 23.30. N. 4.8.

JOHN L. LEWIS,
Sheriff of the parish of Orleans.

THOMAS TOBY, and Thomas Toby and Brothers,
vs.
LEURS CREANCEIRS.
} No. 19,579.

Cinquieme cour de district de la Ne'lle Orleans, dee dos de l'anné c't de d't du 1er d't jud.

En vertu d'un ordre de vent rendu le 8, et signé le 16 Septembre, 1848, à moi adresse, par l'hon. cinquieme cour de district de la Ne'lle Orleans, dans l'affaire ci-dessus je procederai le jeud 9 Novembre, 1848, a midi dans la rotonde de la Bourse de Cite, rue St. Louis, entre celles de Chartres et Royale, pour le compte das créancieres des insolvables, à l'adjudication de tous les droits, titres, et réclamations des dits failles aux terres et proprietes de quelque nature qu'elles soient, avec tous les privileges qui sont dessus, mais sans garantie aucune de tels titres, droits, ou réclamations, abandonnés par les insolvables à leurs creanciers, letout anisi qu'il appert du bilan qui sera exhibé au public à la vente. Conditions: cette criée etant la seconde et derniere les dits droits, titres, et reclamations seront définitivement adjuges au plus affront et dernier encherisseur pour le prix qui en sera offert, à 12 mois de credit, l'acquireur fournissant son obligation avec caution bonne et solvable, conformément à la loi.

JOHN L. LEWIS,
Sheriff de la paroisse d' Orleans.

Subrogation of the Roselius claim, filed 16th September, 1848.

Thomas Toby and H. Lockett, syndics of the creditors of Thomas Toby and Brother,

To C. Roselius, Dr.

To professional services as attorney for absent creditors amounting to, as per tableau filed, - - $250 00

New Orleans, June 16th, 1848.

For value received, I hereby transfer and assign to John Baron, esq, the within claim for two hundred and fifty dollars.

Signed, C. ROSELIUS.
15th July, 1848.

Order, (subrogating Baron to C. Roselius' claim,) 16th Sept., 1848.

THOMAS TOBY, and Thomas Toby and Brother, vs. THEIR CREDITORS. } No. 19,759.

On motion of John S. Baron, and on filing the transfer and assignment to him of all the right, title, and interest of C. Roselius, esqr., in and to this claim of two hundred and fifty dollars, allowance as attorney of the absent creditors in this matter, it is ordered that the said John S. Baron be, and he is hereby, subrogated to all the rights of said Christian Roselius, esq., in the premises.

Order, (rule on syndics) 16th September, 1848.

THOMAS TOBY, and Thomas Toby and Brother, vs. THEIR CREDITORS. } No. 19,579.

On motion of John S. Baron, subrogated to all the rights of Christian Roselius, esqr., as attorney of the absent creditors in this matter, in and to the allowance made to him for the sum of two hundred and fifty dollars; it is ordered that Thomas Toby and Henry Lockett, esqs., syndics of the creditors herein, do shew cause on Friday next, 22d inst., at 10 o'clock, a. m., why they should not pay said Baron said allowance of two hundred and fifty dollars, or why, in default thereof, execution should not issue against them personally therefor.

Sheriff's return.

Received 16th September, 1848. Thomas Toby and Henry Lockett, syndics, are both absent from this State and have no one here to represent them. Returned 19th September, 1848.

Signed, JNO. L. LEWIS, *Sheriff.*

Order, (rule on syndics renewed) 25th September, 1848.

THOMAS TOBY, and Thomas Toby and Brother,
vs.
THEIR CREDITORS.
} No. 19,579.

On motion of John S. Baron, subrogated to all the rights of Christian Roselius, esqr. as the attorney of the absent creditors in this matter in and to the allowance made to him for the sum of two hundred and fifty dollars; it is ordered that Thomas Toby and Henry Lockett, esqr., syndic of the creditors herein, do shew cause on Friday next, the 29th inst., at 10 o'clock, a. m., why they should not pay said Baron said allowance of two hundred and fifty dollars, or why, in default thereof, execution should not issue against them personally therefor.

Sheriff's return.

Rec'd 26th September, 1848. Thomas Toby and Henry Lockett are both absent from the State. Returned 29th September, 1848.

Signed, JNO. L. LEWIS, *Sheriff.*

Oath of appraisers, filed 2d October, 1848.

State of Louisiana, fifth district court of New Orleans.

THOMAS TOBY, and Thos. Toby and Brother,
vs.
THEIR CREDITORS.
}

Before me, George Washington Lewis, deputy clerk of the fifth district court of New Orleans, personally came and appeared Sampson Blossman and John B. Leefe, who solemnly swear that they will well and faithfully perform all and singular the duties of appraisers in the above entitled matter, so help them God.

Signed, S. BLOSSMAN,
" JNO. B. LEEF.

Sworn to and subscribed before me, [at] New Orleans, this 2d day of October, 1848.

Signed, G. W. LEWIS, *D'y clerk.*

Report of appraisers, filed 2d October, 1848.

THOMAS TOBY, and Thomas Toby and Brother, vs. THEIR CREDITORS. } No. 19,579.

5th circuit court of New Orleans.

We, the undersigned, appointed appraisers to value sundry accounts, notes, bills receivable, as per schedule which will be exhibited at the sale, the same surrendered by the insolvents to their creditors, and after having been duly sworn, we appraise the same at the face of the debts and claims brought on the schedule, and which amounts to the sum of four hundred and thirty-eight thousand eight hundred and ninety-three dollars and forty-four cents, ($438,893 $\frac{44}{100}$;) we could not come to any other conclusion, being ignorant of the ability of the debtors to pay, and thinking that the true value of the assets will be ascertained and obtained upon the 12 mos. sale.

Assets, $438,893 $\frac{44}{100}$.

New Orleans, 2d October, 1848.

(Signed) S. BLOSSMAN,
JNO. B. LEEFE.

Order, (rule on syndics,) 17th October, 1848.

THOMAS TOBY, and Thomas Toby and Brother, vs. THEIR CREDITORS. } No. 19,579.

On motion of John S. Baron, subrogated to all the rights of Christian Roselius, esquire, attorney of the absent creditors in this matter, in and to the allowance made to him for the sum of two hundred and fifty dollars, it is ordered, that Thomas Toby and Henry Lockett, esquire, syndics of the creditors herein, do show cause on Friday next, the 20th instant, at 10 o'clock, a. m., why he should not pay said Baron said allowance of two hundred fifty dollars, or why in default thereof execution should not issue against them personally therefor.

Sheriff's return.

Received 17th October, 1848, and on the 19th of the same month, served copy of the within order personally on Thomas Toby; Henry Lockett could not be found, he being absent from the State.

Returned 20th October, 1848.

(Signed) A. S. LEWIS, *D'y sheriff.*

Order, (rule on syndics made absolute,) 20th October, 1848.

THOMAS TOBY, and Thomas Toby and Brother, vs. THEIR CREDITORS. } No. 19,579.

The rule taken herein on the 17th instant, by John S. Baron, subrogated, &c., on the syndics, came on this day for hearing before the court; Baron, p. p., syndics, not present.

When no cause to the contrary being shewn, and the court considering that on the tableau herein filed on the 27th May, 1848, homologated on the 28th June, 1848, the sum of $250 was allowed to C. Roselius, esquire, as attorney of the absent creditors, it is ordered, that said rule be made absolute, and that Thomas Toby and Henry Lockett, syndics of said creditors, do pay to John S. Baron, subrogated to the rights of C. Roselius, said sum of two hundred and fifty dollars, or in default thereof that execution issue against them personally therefor.

Report of appraisers, filed 28th October, 1848.

THOMAS TOBY, and Thomas Toby and Brother, vs. THEIR CREDITORS. } No. 19,579.

Fifth district court of New Orleans, docket of the late district court of the 1st judicial district.

We, the undersigned, duly sworn by the honorable the fifth district court of New Orleans, to value the following described property surrendered by the insolvents to their creditors, viz: All the rights and credits, claims for lands and tenements of whatsoever nature, with all the accrued privileges thereon, but without any guarantee of the existence of titles or such claims, the whole as per schedule filed in court, do value the same, (value on the schedule a $42,177 92,) at the sum of five thousand dollars cash, $5,000 00.

New Orleans, October 20th, 1848.

(Signed) S. BLOSSMAN,
JNO. B. LEEFE.

Order, (opposition discontinued,) 15th November, 1848.

THOMAS TOBY, and Thomas Toby and Brother, vs. THEIR CREDITORS. } No. 19,579.

On motion of J. H. Van Dalson, esq., of counsel for Samuel W. Oakey, opposing creditors herein, it is ordered, that the opposition filed by said Oakey to the tableau of distribution be discontinued.

[REC. XCIV, D. T. 1850.]—12

State of Louisiana, fifth district court of New Orleans.

I, Prosper Le Blanc, clerk of the fifth district court of New Orleans, do hereby certify, that the above and foregoing fifty-four pages do contain a full and complete transcript of the record of the proceedings had in the matter or suit of Thomas Toby, and Thomas Toby and Brother, vs. their Creditors, instituted before the late first judicial district court of the State of Louisiana, under the number 19,579, the records of which court have been by law transferred to the aforesaid fifth district court of New Orleans.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this sixth day of December, in the year of our Lord one thousand eight hundred and forty-eight, and in the seventy-third year of the independence of the United States of America.

[SEAL.]

P. LE BLANC, *Clerk*.

I, Alexander McKenzie Buchanan, sole judge of the fifth district court of New Orleans, do hereby certify, that Prosper Le Blanc is clerk of the said court, and that the signature "P. Le Blanc, clerk," to the foregoing certificate, is in the proper handwriting of him, the said clerk; to his official acts as such full faith and credit are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand and seal at the city of New Orleans, on this sixth day of December, in the year of our Lord one thousand eight hundred and forty-eight.

A. McK. BUCHANAN, *Judge*. [SEAL.]

State of Louisiana, fifth district court of New Orleans.

I, Prosper Le Blanc, clerk of the fifth district court of New Orleans, do hereby certify, that the honorable Alexander McKenzie Buchanan, whose name is signed to the foregoing certificate, is the sole judge of this court; and I do further certify, that said court is a court of record, and that this his signature is genuine.

In testimony whereof I hereunto set my hand, and affixed the seal of the said court, at the city of New Orleans, on this sixth day of December, in the year of our Lord one thousand eight hundred and forty-eight, and in the seventy-third year of the independence of the United States of America.

[SEAL.]

P. LE BLANC, *Clerk*.

And to prove that the Thomas Toby therein named was the plaintiff in this cause; but the counsel for the plaintiff objected to the introduction of such copy as evidence before the jury, as being insufficient to sustain any of the pleas of the said defendant; and such objection was sustained by the court, and the copy aforesaid was not allowed to be introduced as evidence on the part of the said defendant; to which opinion of the court, sustaining the said objection made by the counsel for the plaintiff, and refusing to allow the said copy to go to the jury as evidence, the defendant, by his counsel, excepted, and tendered this

his fourth bill of exceptions; which he prays may be signed, sealed, and made part of the record in this cause, and the same is now done accordingly. Saturday, December 23, 1848.

JOHN C. WATROUS. [SEAL.]

Fifth bill.

District court of the U. States, district of Texas, December term, 1848.

THOMAS TOBY
vs.
DAVID RANDON.

Be it remembered, that after the jury were sworn to try the several issues in this cause, the plaintiff, to maintain the said issues on his part, gave in evidence the testimony stated in full in the former bills of exceptions; and thereupon the defendant, also to maintain the said issues on his part, gave in evidence the testimony stated in full in the former bills of exceptions. And the defendant there closed the testimony on his part.

And thereupon the plaintiff, further to maintain the issues joined on his part, gave in evidence the deposition of Ephraim McLean, as follows:

In the settlement between David Randon and McKinney and Williams, I had no authority to settle any notes drawn by David Randon in favor of Thomas Toby, nor did I know that there were any such notes in existence at the time of said settlement. I can not now state all that was embraced in the settlement so made by me; there were a great many transactions between the parties, David Randon and McKinney & Williams, of from four to five years standing.

The said plaintiff then introduced as a witness Thomas M. League, and thereupon asked and demanded of the said League "to state to the jury what he knew about the existence of slavery for life in Africa." To which question by the said plaintiff's counsel to the said League, the said defendant, by his counsel, objected; because the said evidence was not properly admissible under any allegation in the pleadings in the said cause; because the said question did not propose any proper and legal manner of proving the existence of slavery for life in Africa; and because it did not appear that the said Thomas M. League was a person qualified to prove such facts. But the court overruled the objection of the defendant's counsel to the said question by the plaintiff to the said Thomas M. League, and permitted the same to be put to the said League, and answered as evidence in this cause before the jury.

To which opinion and ruling of the court, permitting the said question to be put to the said League, and answered as evidence in this cause before the jury, the defendant, by his counsel, excepted, and tendered this his fifth bill of exceptions, and prays that the same may be signed, sealed, and made a part of the record in this cause; which is done accordingly.

Saturday, December 23, 1848.

JOHN C. WATROUS. [SEAL.]

Sixth bill.

District court of the United States, district of Texas, Dec. term, 1848.

THOMAS TOBY
vs.
DAVID RANDON.

Be it remembered, that after the jury were sworn to try the several issues in the said cause, the plaintiff, to maintain the said issues on his part, introduced the evidence contained in the former bills of exception; and thereupon the defendant also introduced the evidence contained in the former bills of exception, and the plaintiff thereafter introduced the evidence of Thomas M. League, as follows:

Witness has made two voyages to the coast of Africa, the first in the year 1834, the second in the year 1835, and remained on the coast each time about six months. Witness was observant and inquiring in regard to the customs and habits and condition of the people; knows that slavery existed in all parts of Africa where he landed, except in Liberia. A large proportion of the people were slaves. Some masters held great numbers; the slavery which existed was a slavery for life, and was of the most despotic and arbitrary character.

Cross examined.

Witness considers himself as understanding very well the customs and conditions of the Africans among whom he was. Witness did not touch upon the Gold coast; knows nothing whatever of the Gold coast or Lucame tribe of Africans; witness was in Liberia, and upon the Slave coast, and upon the Grain coast. Besides the coast of Africa runs a good deal east and west in that portion of it. It was sometimes the case that negroes who were captured in battle were brought from the interior of the country to the African coast and sold.

Witness would not feel himself qualified to give information or advice as to the laws which exist among the Africans, but he well knows the habits, customs, and institutions of the country, for he was observant and made them his study, and feels himself qualified to testify in relation to them.

Upon the trial of this cause, the counsel for the plaintiff and defendant relied upon certain laws and parts of laws and constitutions of Spain, of the United Mexican States, of the State of Coahuila and Texas, and of the Republic of Texas, copies of the original of which, or correct translations, here follows:

1. *Decree of the King of Spain and the Indies, of December*, 1817.

(B.)

Spanish decree.

The introduction of negro slaves into America was one of the first measures which my predecessors dictated for the support and prosperity of those vast regions, soon after their discovery. The impossibility of

inducing the Indians to engage in different useful though painful labors, arising from their complete ignorance of the conveniences of life, and the very small progress they had made in the arts of social existence, required that the working of the mines, and the cultivation of the soil, should be committed to hands more robust and active than theirs.

This measure, which did not create slavery, but only took advantage of that which existed through the barbarity of the Africans, by saving from death their prisoners, and alleviating their sad condition, far from being prejudicial to the negroes transported to America, conferred upon them not only the incompairable blessing of being instructed in the knowledge of the true God, and of the only religion in which the Supreme Being desires to be adored by his creatures, but likewise all the advantages which accompany civilization, without subjecting them in their state of servitude to a harder condition than that which they endured in freedom, when free in their native country.

Nevertheless, the novelty of this system demanded prudence in its execution; and thus it happened that the introduction of negro slaves into America depended always on particular licenses, which my predecessors granted according to circumstances of places and times, till the era when untrained slaves were generally permitted to be imported both in national and foreign vessels, by the royal proclamations of the 28th of September, 1789, the 12th of April, 1798, and the 22d of April, 1804; in each of which the different places for their introduction were determined. All this clearly evinced that the christian wisdom of my predecessors considered always these provisions as exceptions to the law, and dependent on variable conditions. Although the license granted the 22d of April, 1804, had not expired when Divine Providence restored me to the throne to which it had destined me, and of which an unjust usurper had perfidiously attempted to deprive me, the disturbances and dissensions excited in my American dominions during my absence, immediately fixed my sovereign attention, and meditating incessantly on the most appropriate means of re-establishing good order in these remote possessions, and giving them all the encouragement of which they are capable, I was not slow in perceiving that the circumstances which had induced my predecessors to permit the traffic in slaves on the coast of Africa, and their introduction into both Americas, had entirely changed. In these provinces the number of indigenous negroes had increased prodigiously, and even that of free negroes, under the fostering care of a mild government and the christian humanity of the Spanish proprietors; the number of the white inhabitants has likewise been much augmented, and the climate is not now so prejudicial to the latter as it was before the soil was cleared of wood, and subjected to cultivation. The advantage likewise which resulted to the inhabitants of Africa from their transportation to a civilized country is not now so urgent or exclusive, since an enlightened nation has undertaken the glorious task of civilizing them in their own land. At the same time the general progress of improvement in Europe, and the spirit of humanity which directed its late transactions, in restoring the political edifice which the wickedness of a usurped government had shaken to

its foundation, have excited among European sovereigns a desire to see this traffic abolished; and at the Congress of Vienna, agreeing on the necessity of the abolition, they occupied themselves in facilitating its execution by the most amicable negotiations with those powers which had colonies, meeting in me that disposition which became so laudable an undertaking. Those considerations moved my royal mind to inform itself from enlightened persons, jealous for the prosperity of my States, as to the effects which the abolition of the traffic would produce on them. Having seen their reports and being desirous to attain certainty in a matter of so grave importance, I transmitted them to my council of the Indies, with my royal order of the 14th of June, 1815, that it might communicate to me its opinion and advice. Having collected all these copious materials, and having examined the proposition which the same supreme tribunal laid before me in its deliberation of the 15th of February, 1816, answering to the confidence which I repose in it, and coinciding with its opinion respecting the abolition of the traffic in slaves; and co-operating with the King of Great Britain by a solemn treaty, embracing all the points of reciprocal interest involved in this important transaction; and determining that the time for the abolition was arrived, the interest of my American States being duly reconciled with the sentiments of my royal mind, and the wishes of all the sovereigns, my friends and allies, I have decreed as follows:

"Art. I. From this day forward, I prohibit all my subjects, both in the Peninsula and in America, from going to buy negroes on the coasts of Africa, north of the line. The negroes who may be bought on the said coasts shall be declared free in the first port of my dominions at which the ship in which they are transported shall arrive. The ship itself, together with the remainder of its cargo, shall be confiscated to the royal treasury, and the purchaser, the captain, the master, and pilot, shall be irrevocably condemned to ten years transportation to the Philippines.

"Art. II. The above punishment does not attach to the trader, the captain, the master, and pilot, of the vessels which sail from any port of my dominions for the coasts of Africa, north of the line, before the 22d of November, of the present year; to which period I grant, besides an extension of six months, counting from the above date, to complete their voyages.

"Art. III. From the 30th of May, 1820, I equally prohibit all my subjects, as well in the Peninsula as in America, from going to purchase negroes along those parts of the coast of Africa, which are to the south of the line, under the same penalties imposed in the first article of this decree, allowing, likewise, the space of five months from the above date to complete the voyages that may be undertaken before the above mentioned 30th of May, in which the traffic in slaves shall cease in all my dominions, as well in Spain as in America.

"Art. IV. Those who, using the permission which I grant till the 30th of May, 1820, shall purchase slaves on that part of the coast of Africa which lies south of the line, shall not be allowed to carry more slaves than five to two tons of tonnage of their vessel; and any person

contravening this enactment shall be subjected to the penalty of losing all the slaves on board, who shall be declared free at the first port of my dominions in which the ship arrives.

"Art. V. This computation is made without a reference to those who may be born during the voyage, or to those who may be serving on board as sailors or servants.

"Art. VI. Foreign vessels which may import negroes into any port of my dominions, shall be subjected to the regulations prescribed in this decree; and in case of contravening them shall be subjected to the penalties contained in it.

"And my royal pleasure being that the above decree should circulate in my dominions of America and Asia, for its punctual observance I communicated it to my supreme council of the Indies, signed with my own hand, under date of the 22d of September last past; and on its being published in that tribunal, the 1st instant, a resolution passed that steps should be taken to enforce it, and that the said tribunal should, for such purpose, circulate this my royal cedula, by which I direct all my viceroys, presidents, courts of judicature, commandants general, governors, and intendants of the Indies, of the adjacent and of the Philippine islands, to keep, fulfil, and execute, and cause to be kept, fulfilled, and executed, all that has been enjoined in this my sovereign determination, without transgressing or contravening, or permitting to be transgressed or contravened, its contents in any way, causing it, for that purpose, to be published as an order, not only in the capital cities, but also in the chief towns of jurisdiction of their respective districts; and communicating it likewise, each in his territory, to the tribunals, justices, authorities, and persons, who in any way may be bound to observe it; and this my royal cedula shall be attended to by the accountants general offices of my said council. Dated Madrid, the December, 1817.

"Your Majesty prohibits for ever all your subjects of the Peninsula, as well as of America, from purchasing negroes on the coast of Africa, enacting that voyages for that purpose may not be undertaken to the coasts north of the equator after the 22d of November, nor to those south of the equator after the 30th of May, 1820, under the penalties specified."

2. *Decree of the United Mexican States of the 13th July, 1824, prohibition of the commerce and traffic in slaves.*

The sovereign general constituent Congress of the United Mexican States has thought proper to decree the following:

1. The commerce and traffic in slaves, coming from whatever country and under whatever flag, shall be forever prohibited within the territory of the United Mexican States.

2. The slaves which may be introduced against the tenor of the preceding article shall become free, by the act alone of treading on Mexican soil.

3. Every vessel, whether national or foreign, in which slaves are transported and introduced into the Mexican territory, shall be imme-

diately confiscated with the remainder of the cargo, and the owner, the purchaser, the captain, the superintendant, and pilot shall suffer the punishment of ten years imprisonment.

4. This law shall take effect from the day of its publication, but as to the punishment prescribed in the preceding article, it shall not operate until six months hereafter with respect to the colonists, who, by virtue of the law of the 14th of October last, on the colonization of the Isthmus of Guayacoalco, are importing slaves with the design of introducing them into the Mexican territory.

3. *Decree of the United Mexican States, of the 15th September*, 1829.

Abolition of slavery.

The President of the United Mexican States, to the inhabitants of the Republic:

Know ye, that desiring to signalize the anniversary of independence in the year 1829, by an act of national justice and benevolence which will result in a benefit and confirmation of so great a blessing, and better secure public tranquility, which may promote the prosperity of the Republic, and re-establish an unfortunate part of its inhabitants in the sacred rights which nature has given them, and protect the nation by wise and just laws, agreeably to the provisions of the 30th article of the constitutive act, exercising the extraordinary powers which have been given to me, I have decreed as follows:

1. Slavery is abolished within the Republic.

2. Those who are now considered as slaves are consequently free.

3. When the circumstances of the treasury shall permit, the owners of slaves shall receive the indemnity which the laws may provide:

4. *Decree of the United Mexican States, of the 6th of April*, 1830.

Permission to import certain prohibited kinds of cotton goods, during the time specified; application of the duties thereon; various provisions relative to the colonization and security of Texas.

Art. 9. The entrance of foreigners under any pretext within the frontier of the north is prohibited, unless they are provided with a passport issued by the agents of the Republic residing in the place whence they emigrate.

Art. 10. No change shall be made with respect to the colonies already established, nor with respect to the slaves now in them; but the national executive, or the executive of each State shall, under the strictest responsibility, enforce the fulfilment of the laws of colonization, and prevent the further introduction of slaves.

5. *Constitution of the State of Coahuila and Texas, adopted March* 11, 1827.

Art. 13. From and after the promulgation of the constitution in the capital of each district, no one shall be born a slave in the State, and after six months the introduction of slaves under any pretext shall not be permitted.

6. *Colonization law of the State of Coahuila and Texas.—Decree No.* 16, *promulgated March* 24, 1825.

Art. 46. In respect to the introduction of slaves, the new settlers shall subject themselves to the laws that are now, and shall be hereafter, established on the subject.

7. *Decree of the State of Coahuila and Texas—No.* 18.

Decree No. 18.—Creating judges of responsibility.

The Congress of the State of Coahuila and Texas, exercising the corresponding power for regulating internally whatever belongs to the better and more prompt administration of justice, and in consideration of the evils caused by some of the judges infringing the constitution and existing laws, by reason of the difficulty encountered in promptly and conveniently fulfilling the law of the 24th of March, 1823, which comprises the rules for exacting the proper responsibility in these cases, has thought proper to decree, and decrees:

Art. 1. All complaints against judges, for infringing the constitution and existing laws by abuse of their authority, shall be directed to Congress, which, after the record is formed, and the decision of a committee from their own body is heard, shall declare whether there be a sufficient cause for action.

Art. 2. It having been declared that there is a just ground for action, Congress shall order the record to be forwarded to the competent judge to be put in execution; and without this requisite, no judge can be tried for the aforementioned crimes.

Art. 3. For the present, in cases presented, until the primary tribunal is organized in the State, the constitutional alcades and regidores officiating in legal turn, are constituted judges of responsibility.

Art. 4. The said judges can take cognizance, and, consulting a lawyer, proceed so far as to pronounce sentence; but the sentence can in no wise be executed without having been previously revised by the corresponding tribunal.

For the fulfilment thereof the Governor of the State ad interim shall cause it to be published and circulated. Given in Saltillo, on the 14th of July, 1825.

8. *Colonization law of the State of Coahuila and Texas.—Decree No.* , *promulgated April* 28, 1832.

Art. 35. The new settlers, in respect to the introduction of slaves, shall conform to the laws that are now, or shall be hereafter, enacted on the subject.

Art. 36. Servants and day laborers, hereafter introduced by foreign colonists, cannot be obligated by any contract to continue in the service of the latter longer than ten years.

9. *Constitution of the Republic of Texas, adopted March* 17, 1836.

General provisions.

Sec. 9. All persons of color, who were slaves for life previous to their

emigration to Texas, and who are now held in bondage, shall remain in the like state of servitude: Provided, the said slave shall be the bona fide property of the person so holding said slave as aforesaid. Congress shall pass no laws to prohibit emigrants from bringing their slaves into the Republic with them, and holding them by the same tenure by which such slaves were held in the United States; nor shall Congress have power to emancipate slaves; nor shall any slaveholder be allowed to emancipate his or her slave or slaves without the consent of Congress, unless he or she shall send his or her slave or slaves without the limits of the Republic. No free person of African descent, either in whole or in part, shall be permitted to reside permanently in the Republic, without the consent of Congress; and the importation or admission of Africans or negroes into this Republic, excepting from the United States of America, is forever prohibited and declared to be piracy.

An act of limitations, approved February 5, 1841.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas in Congress assembled, That, from and after the approval or final passage of this act, all actions of trespass for injury done to the estate or property of another; all actions for detaining the personal property, and for converting such personal property to one's own use; all actions for taking away the goods and chattels of another; and all actions upon open accounts, other than such accounts as concern the trade of merchandise between merchant and merchant, their factors and servants, shall be commenced and sued within two years next after the cause of such action or suit, and not after. All actions for injuries done to the person of another, as of assault, battery, wounding, or imprisonment; and all actions for injuries done the character or reputation of another, as of libel or slander, shall be commenced and sued within one year next after the cause of such action or suit, and not after; and all actions of debt grounded upon any contract in writing, shall be commenced and sued within four years next after the cause of such action or suit, and not after.

Sec. 12. Be it further enacted, That when an action may appear to be barred by a law of limitations, no acknowledgment of the justice of the claim, made subsequent to the time it became due, shall be admitted in evidence to take the case out of the operation of the law, unless such acknowledgment be in writing, and signed by the party to be charged thereby.

All of which laws and parts of laws and constitutions are to be considered as referring to and making part of the evidence in the said cause; and after introducing the same, the parties closed their testimony in this cause.

Whereupon the counsel for the defendant moved the court to instruct the jury as follows, that is to say:

First. That the instrument dated March 14, 1848, does not itself amount in law to an acknowledgment of the justice of any particular claim, and cannot remove the bar of the act of limitations to either of the particular notes now sued on.

Second. That if the jury believe, from the testimony, that the negroes, for the purchase of whom the notes now sued on were given, were Africans imported into Cuba, in the year 1835, and brought from Cuba to Texas, in the same year, for the purpose of being held or sold as slaves, they will find for the defendant.

Third. That if the jury believe, from the testimony, that the negroes, for the purchase of whom the notes now sued on were given, were imported into Texas before the adoption of the constitution of the Republic of Texas; and if it has not been proved that they were slaves for life immediately before they were so brought to Texas, and also that they were held in bondage at the time of the adoption of the constitution; and also that they were the bona fide property of the person then holding the same, then the jury will find for the defendant.

Fourth. That the proof of bona fide property in the persons of color referred to in the constitution of the Republic of Texas, is only a bill of sale or some legal conveyance and possession under it, and that mere proof of possession and acquiescence on the part of those held as slaves, is not sufficient proof of property.

Fifth. That if the jury believe, from the testimony, that the negroes, for the purchase of whom the notes now sued upon were given, were brought to Texas in the year 1835, then, unless it is also proved to their satisfaction that the same negroes were lawfully held in bondage as indentured servants at the time of the adoption of the constitution of the Republic of Texas, the constitution did not make them slaves, and the jury will find for the defendant.

Sixth. That if the jury believe, from the testimony, that the negroes, for the purchase of whom the notes now sued on were given, did not voluntarily emigrate to Texas, or were not brought to Texas by some person emigrating there with them; but were imported in the course of traffic in negroes, and for the purpose of such traffic, in the year 1835, then the constitution did not make them slaves, and the jury will find for the defendants.

Seventh. That if the jury believe, from the testimony, that the negroes, for the purchase of whom the notes now sued on were given, were brought from Africa to Cuba for the purpose of traffic and to be sold as slaves since the year 1821, then it makes no difference whether they were before held as slaves for life in Africa or not.

Eighth. That proof of a custom in Africa to hold negroes as slaves, without proof of any law authorizing this custom, or proof that the nations or tribes in Africa have no laws, is not sufficient to show that such negroes were slaves for life.

Ninth. That proof that slavery exists in other nations or tribes in Africa affords no legal presumption, in the absence of express proof, that slavery exists in the Gold coast or Lucame tribe; and that the presumption is that the members of that tribe are free.

Tenth. That if the jury believe that the instrument dated March 14th, 1844, refers alone to notes held against the defendant by Thomas F. McKinney, and if they believe that at the time of making said instrument the said McKinney did not actually hold the notes now sued

on, then the said instrument does not refer to either of said notes, and cannot take either out of the statute of limitations.

But the court refused to give the said instructions to the jury.

To which opinion of the court refusing the said instructions, the said defendant, by his counsel excepted, and tendered this his sixth bill of exceptions, which he prays may be considered as applicable to the refusal of each and all of said instructions, and be signed, sealed, and made a part of the record in the cause; and the same is done accordingly.

Saturday, December 23d, 1848.

JOHN C. WATROUS. [SEAL.]

Seventh bill.

District court of the United States, district of Texas, December term, 1848.

THOMAS TOBY
vs.
DAVID RANDON.

Be it remembered, that after the jury were sworn to try the several issues in this cause, the plaintiff, to maintain the said issues on his part, gave in evidence to the jury the testimony stated in full in the former bills of exceptions; and thereupon the defendant, to maintain the said issues on his part, gave in evidence the testimony also stated in the former bills of exceptions.

Whereupon the counsel for the defendant moved the court to instruct the jury as follows, that is to say:

First. That if the jury believe, from the testimony and from the instrument dated March 14, 1844, that the said instrument only refers to one note given by the defendant to the plaintiff, and may refer to the first of the notes set forth in the petition as well as to the second; and that it is uncertain to which it particularly refers, they will not apply it to either, and will find for the defendant as to the first note.

Second. That if the jury believe, from the testimony, that it was agreed between Thomas F. McKinney and the defendant, at the time of the settlement between them in November, 1846, that the instrument dated March 14, 1844, was to be given up to the defendant, and that at that time the said McKinney was authorized to act as agent of the plaintiff with reference to the settlement of the notes now sued on; then the jury will consider such an agreement as an entire discharge and release of the defendant, from any promise expressed in the said instrument or to be implied from it, and as entirely cancelling that instrument for the purposes of this suit, and they will find for the defendant as to the first note.

And the court indeed gave the said instructions, but also in connection therewith, and in addition thereto, instructed the jury as follows, that is to say:

First. That whether the said instrument referred to one or both notes or not, and to which it did refer, were questions of fact for the jury to

determine; and if they found that the said instrument referred to that note which would otherwise have been barred by the act of limitations, they would consider it as removing that bar.

Second. That, notwithstanding what was said in the second instruction hereinbefore set forth, if Thomas T. McKinney was not authorized by the plaintiff to surrender to the defendant the instrument dated March 14, 1844, then his agreement to surrender it, if he made such an agreement in the settlement of his individual transactions, did not prejudice the right of the plaintiff to the possession, production, and effect of such instrument or prevent its acting as a legal bar to the plea of the act of limitations; and if the said McKinney had surrendered the paper without authority from Toby, Toby could have given notice to produce the paper at the trial, and if it had not been produced, could have gone into parol proof of its contents.

To which opinion of the court, giving the said first mentioned instructions, and also giving the qualifications and additions immedintely preceding, the said defendant, by his counsel, excepted, and tendered this his seventh bill of exceptions, which he prays may be considered as applicable to each of the said instructions, and be signed, sealed, and made part of the record in the cause; which is done accordingly.

Saturday, December 23d, 1848.

JOHN C. WATROUS. [SEAL.]

Eighth bill.

District court of the United States, district of Texas, December term, 1849.

THOMAS TOBY
vs.
DAVID RANDON.

Be it remembered, that after the jury were sworn to try the several issues in this cause, the plaintiff, to maintain the said issues on his part, gave in evidence the testimony stated in full in the former bills of exceptions; and thereupon the defendant, to maintain the said issues on his part, gave in evidence the testimony stated in full in the former bills of exceptions. Whereupon the court instructed the jury, among other things, as follows, that is to say:

First. That the constitution of the Republic of Texas in the "general provisions," section ninth, by the words therein used, "slaves for life previously to their emigration to Texas," does not necessarily mean "slaves for life immediately before their emigration to Texas." [And that the court have no right to put a word into the constitution; that the constitution must be construed as it is, and that the constitutional provision means, that if a man had been a slave for life previous to the time at which he emigrated to Texas, and was held in bondage in Texas at the time the constitution was adopted, and was held in bondage under such circumstances that he would have been the slave of the person so holding him, if slavery existed by law, then the constitution makes him a slave for life.] The last part in brackets was not spe-

cially excepted to, and it is here inserted by order of the court against the wish and the opinion of the counsel for the defendant, who regard it as no part of this bill.

Second. That the Gold coast, the Grain coast, and the Slave coast are inconsiderable portions of Africa; and that if it has been proved that slavery exists in one of those portions, the jury may reasonably infer its existence in the others, in the absence of all other proof upon the subject. To which opinion of the court, giving the said instructions to the jury, the defendant, by his counsel, excepted, and tendered this his eighth bill of exceptions, which he prays may be considered as applicable to each of the said instructions, and may be signed, sealed, and made part of the record in this cause; which is done accordingly.

Saturday, Dec. 23d, 1848. JOHN C. WATROUS. [L. S.]

And afterwards, to wit, on the thirtieth day of December, in the year of our Lord one thousand eight hundred and forty-eight, the parties aforesaid, by their attorneys, came into court; and thereupon it is considered by the court that the plaintiff recover of the defendant the sum of five thousand seven hundred and fifty-eight dollars and four cents, the amount of the verdict rendered by the jury herein at a former day of this court; also his costs by him about his suit in this behalf expended, &c.

And afterwards, to wit, on the tenth day of January, A. D. 1849, the following writ of error was sued out by the defendant, to wit:

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the honorable the judge of the district court of the United States, for the district of Texas, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, between Thomas Toby and David Randon, a manifest error hath happened to the great damage of the said David Randon, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, this tenth of January, in the year of our Lord
[SEAL.] one thousand eight hundred and forty-nine.

JAMES LOVE,
Clerk of the United States district court, for the district of Texas.

Allowed by JOHN C. WATROUS,
U. S. Judge, district of Texas.

And afterwards, to wit, on the 10th day of January, A. D. 1849, the following power of attorney was filed, to wit:

THE STATE OF TEXAS, *county of Brazoria.*

Know all men by these presents, that I, Robert Mills, of the county and State aforesaid, have nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint, and in my place and stead depute and put, E. M. Pease, of said county and State, to be my lawful agent and attorney in fact, for me and in my name to sign, seal, and deliver my obligation or bond, as the surety for David Randon, that may be necessary in order to carry up to the Supreme Court of the United States a certain cause in the United States district court, for the district of Texas, in which Thomas Toby is plaintiff, and David Randon is defendant, hereby giving and granting unto my said attorney full power and authority to do every thing necessary in the premises, in as full and ample manner as I could if personally present acting for myself; and I also hereby give and grant unto my said attorney full power and authority to appoint a substitute, with the same power and authority as is hereby vested in him, the said Pease; hereby binding myself to ratify and confirm whatever my said attorney, or the substitute appointed by him, may lawfully do by virtue of this power.

Witness my hand and seal, this the 23d day of December, A. D. 1848.

R. MILLS. [SEAL.]

J. T. HAWKINS,
EDWARD PURCELL.

THE STATE OF TEXAS, *county of Brazoria.*

Before me, Edward Purcell, chief justice in and for the county aforesaid, personally came and appeared before me, Robert Mills, to me well known, and whose signature is affixed to the within instrument of writing, and declared that he sealed and signed the same for the purposes therein expressed.

In testimony whereof I have hereunto set my hand and caused the seal of the county court of said county to be affixed, at Bra-
[SEAL.] zoria, this 23d December, 1848.

EDWARD PURCEL,
Chief justice, county of Brazoria.

And afterwards, to wit, on the 10th day of January, A. D. 1849, the following bond for writ of error was filed in said court, in the words following, to wit:

DAVID RANDON, plaintiff,
vs. } In error.
THOMAS TOBY, defendant.

Know all men by these presents, that we, David Randon and Robert

Mills are held and firmly bound unto the above named Thomas Toby, in the sum of ten thousand dollars, to be paid to the said Thomas Toby, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents; sealed with our seals, and dated this tenth day of January, A. D. 1849.

Whereas the above named David Randon hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled cause, by the United States district court for the district of Texas. Now, therefore, the condition of this obligation is such, that if the above named David Randon shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

Sealed and delivered by D. Randon, in presence of witnesses.

D. RANDON. [SEAL.]
R. MILLS, [SEAL.]
By E. M. PEASE,
Agent and attorney in fact.

Witness: J. KIRKLAND,
E. H. STANSBURY.
Witness: W. P. BALLINGER,
H. McQUEEN.

Approved: JOHN C. WATROUS, *U. S. Judge.*

Citation.

The United States of America, to Thomas Toby, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the United States district court, for the district of Texas, wherein David Randon is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should [not] be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this tenth day of January, in the year of our Lord one thousand eight hundred and forty-nine.

JOHN C. WATROUS, *U. S. Judge.*

I admit that the above citation on the said writ of error was served upon me this seventeenth day of October, 1849.

JONAS BUTLER,
Administrator of Thos. Toby, dec'd, and the attorney of record for pl'ff.

UNITED STATES DISTRICT COURT,

District of Texas, ss.

THOMAS TOBY, plaintiff,
vs.
DAVID RANDON, defendant.

I, James Love, clerk of the United States district court, for the district of Texas, certify that the foregoing pages, numbered from one to one hundred and forty-seven inclusive, contain a true and complete copy of the record, and all the proceedings had in the above entitled cause.

In testimony whereof I have hereunto subscribed my name *name* as clerk aforesaid, and caused the seal of court to be affixed, on
[L. S.] the seventeenth day of October, A. D. 1849.

JAMES LOVE, *Clerk*.